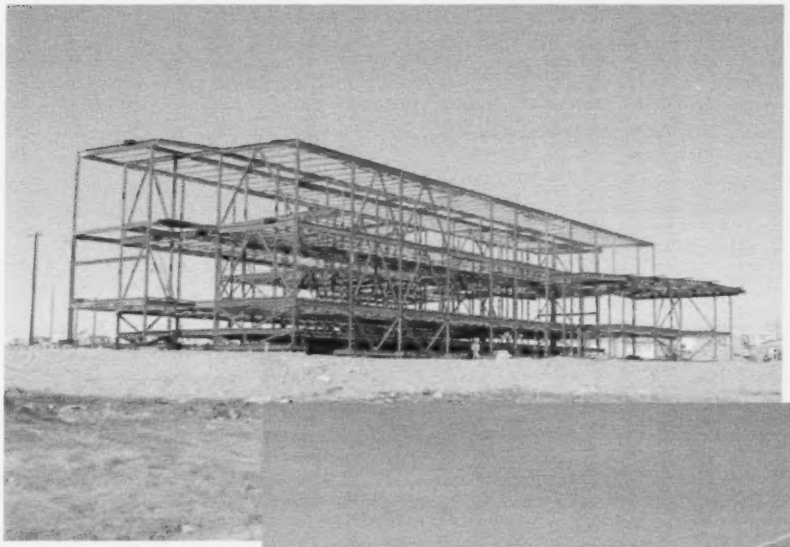
Nunavummi Nangminiqaqtunik Ikajuuti Policy First Comprehensive Review, 2003



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1.0 EXECUTIVE SUMMARY

The Government of Nunavut's contracting preference policy, the *Nunavummi Nangminiqaqtunik Ikajuuti* (NNI Policy) came into effect April 1, 2000. The Policy was created by the new Government of Nunavut (GN) in close collaboration with Nunavut Tunngavik Inc. (NTI).

The NNI Policy originated through a combination of the Business Incentives Policy that the GN inherited at partition in 1999 and the immediate need for the new Government to respond to its obligations in the Nunavut Land Claims Agreement (NLCA), particularly Article 24 "Government Contracting". The GN also inherited a set of "Contract Procedures for the Nunavut Settlement Area" (ratified in 1997), which had been the Government of the Northwest Territory's (GNWT) main effort to live up to its Article 24 obligations.

1.1 THE REVIEW PROCESS

The NNI Policy includes a mechanism for periodic review. The GN/NTI Working group that formulated the Policy in 1999-2000 felt it would be very important to have a way to make sure that the objectives of the Policy were being met, and to fine tune it where necessary. Because of the collaborative nature of NNI Policy development and monitoring, a fairly formal review process was introduced.

The 2003 Comprehensive Review of the NNI Policy is taking place three years into the life of the NNI Policy. Not only must the Review evaluate the GN's progress in achieving the specific objectives of the NNI Policy it must, at the same time, see if the GN is meeting its general obligations laid out in Article 24 of the *Nunavut Land Claims Agreement.*

The Terms of Reference for the 2003 NNI Comprehensive Review Committee state that "The Review Committee will conduct a comprehensive review of the NNI Policy including but not limited to:

- A review of GN contracting data, subject to or exempted from the NNI Policy, from the establishment of the Policy on April 1, 2000 to March 31, 2003;
- A review of the substance and application of the policy to determine the extent to which the NNI Policy meets the objectives set out in Article 24 of the NLCA and of the objectives of the NLCA in general;
- A review of the substance and application of the policy to determine the extent to which the NNI Policy meets the objectives set out in sections 7, 8 and 9 of the policy;
- A review of the recommendations of the previous review and their implementation;
- A review of the monitoring and enforcement concerns that may have arisen or may arise out of the implementation of the NNI Policy; and

- A review of the results of all submissions and input received through community consultations and written submissions from third parties."

The Terms of Reference for this review are attached as Appendix 1.

The Review Committee has used a number of methods to gather input, including public consultations in six different Nunavut communities, written submissions from interested parties, as well as input and deliberation from Committee members and advisors. A summary of what the Committee heard in the public consultations is attached as Appendix 3. The written submissions can be obtained from the Government of Nunavut, Public Works & Services NNI Advisor, or can be read on the www.gov.nu.ca/pws website.

In preparing this report, the review Committee recognized three levels of changes that might be necessary:

a) Changes to the NNI Policy;
b) Changes to procedures currently being used by various GN Departments to implement the NNI Policy; and
c) "Systemic" changes - broad policy recommendations that go beyond the existing scope of the NNI Policy.

1.2 FINDINGS

The question underlying the 2003 NNI Comprehensive Review is: "Does the NNI Policy work?" The conclusion reached by the Review Committee is that it has been partially effective. Some of the NNI Policy objectives require more than three years to realize; some of the mechanisms used so far to achieve these objectives are inadequate.

1.2.1 Data Reports

The best indicator of the direction of the NNI Policy to date can be seen in the Contract Data Reports from the past three years. The data show trends in the following major areas:

- All Contracts
- Small Contracts
- Local Contract Authorities (LCAs)
- Large Contracts - Including Goods
- Large Contracts - Excluding Goods
- Sole Source Contracts
- Contracts Awarded as a Result of NNI Bid Adjustments

The 2000-2001 to 2002-2003 reports shows the following data as indicators:

- **All Contracts:** 11,298 contracts were awarded in 2000-2001, 12,851 contracts in 2001-2002 and 11,181 contracts in 2002-2003. The total value of the contracts that went to both Inuit and Nunavut firms did not change substantially over the period but there was an increase in value for Inuit firms from 24% in 2000-2001 to 37% in 2002-2003.
- **Small Contracts:** 1,038 contracts were awarded in 2000-2001, 1,120 contracts in 2001-2002 and 1,321 contracts 2002-2003. The total value of these contracts that went to both Inuit and Nunavut firms increased over this period with the increase in the value of the contracts for Inuit firms increasing from 20% in 2000-2001 to 27% in 2002-2003.
- **Local Contract Authorities (LCAs):** 9,466 LCAs were awarded in 2000-2001, 10,890 in 2001-2002 and 9,113 LCAs in 2002-2003. The total value of the contracts that went to both Inuit and Nunavut firms did not change substantially over the period but there was a marked increase in value for Inuit firms from 23% in 2000-2001 to 38% in 2002-2003.
- **Large Contracts - Including Goods:** 794 contracts were awarded in 2000-2001, 841 in 2001-2002 and 747 in 2002-2003. The total value of the contracts that went to both Inuit and Nunavut firms did not change substantially over the period but there was an increase in value for Inuit firms from 24% in 2000-2001 to 37% in 2002-2003.
- **Large Contracts - Excluding Goods:** 229 contracts were awarded in 2000-2001, 311 in 2001-2002 and 234 contracts in 2002-2003. The total value of the contracts that went to both Inuit and Nunavut firms did not change substantially over the period but there was an increase in value for Inuit firms from 20% in 2000-2001 to 39% in 2002-2003.
- **Sole Sourced Contracts – Excluding Goods:** 18.5% of contracts awarded using this method in 2000-2001, 24.5% in 2001-2002 and 14% in 2002-2003. The total value of the contracts that went to both Inuit and Nunavut firms increased over the period but there was no significant change for Inuit firms as they went from 0.9% in 2000-2001 to 1% in 2002-2003.

An important measure of the effectiveness of the Policy is the number of contracts awarded as a result of bid adjustments for the NNI categories of Nunavut firms, local firms, and Inuit firms. In 2000-01 this figure was $3,078,134, in 2001-02 it was $2,677,581, and in 2002-03 it was $16,703,883. An important note regarding these numbers is that the value of the contracts awarded to Inuit firms increased from 37% in 2000-2001 to 53% in 2002-2003.

The GN's list of Approved Nunavut Firms (the Nunavut Firm Registry) and NTI's Inuit Firm Registry are both good indicators of the growth of Nunavut's business sector over the past four years. The GN-maintained Nunavut Firm Registry has grown from 148 Inuit firms out of a total of 410 registered from April 1, 2000 to 223 firms out of 392 registered April 1, 2003. (The drop in total firms is explained by the removal of firms with majority

ownership outside Nunavut as of March 31, 2003). The NTI Inuit Firm Registry has grown from 200 firms in 1999 to 300 Inuit firms in 2003 (*Nunavut Economic Development Strategy*, P. 14).

1.2.2 Challenges

The NNI Policy attempts to balance different types of interest. These include the NLCA requirements to provide various types of preference for Inuit and Inuit firms through government contracting and the GN's need, as a public government, to treat all Nunavummiut and Nunavut businesses fairly. Other conflicting interests include those of small and large firms, smaller and larger communities, and the demand for providing Nunavut services at a reasonable cost. To address these conflicting priorities, the GN should focus on its expenditures within Nunavut and make the best use of existing territorial resources.

After listening to the public and receiving written submissions the 2003 NNI Comprehensive Review Committee identified quite a significant number of areas that required study. These include:

a) Recommendations from 2001 NNI Review
b) Absence of 2002 NNI Review
c) Bid adjustments
d) Penalties and Bonuses
e) Inuit Employment
f) Training (especially trades training and apprenticeship)
g) Status of registered Nunavut and Inuit firms
h) Article 24 requirements not covered in current NNI Policy
I) Companies recognized by NTI under Article 40 of the NLCA
j) Contract Procedures and Procedural gaps among GN Departments
k) Internal consistency of the NNI Policy
l) Consistency with the Contracting Policy for Territorial Parks
m) Nunavut manufacturing
n) Contributions of non-Nunavut companies
o) Ongoing research and data collection
p) Enforcement and monitoring provisions
q) Sole source contracts
r) Cabinet responsibilities and prerogatives
s) Continuity of the Review Committee and oversight of review recommendations

1.3 MAJOR RECOMMENDATIONS

The 2003 NNI Comprehensive Review Committee has made some effort to limit the number of recommendations being brought forward. On the other hand, it has taken the mandate for a comprehensive review seriously and attempted to look carefully at all aspects of the NNI Policy. In so doing, it has also recognized the need for a large number of changes and additions to the policy. Many of the Committee's recommendations reflect the need to modify the bid adjustment system now in place. Another large set of recommendations acknowledges the importance of employment and training incentives.

1.3.1 Previous Reviews

So far, the review process has not been carried out as intended by the NNI Policy. The only Annual Review of those mandated by the Policy was conducted in the fall of 2001. A report was completed in the spring of 2002. The current report describes the findings of the first Comprehensive Review scheduled under the NNI Policy, and also includes some of the findings that would have been in the second Annual Review had it been completed.

One of the recommendations of the Review Committee is to implement the recommendations from the 2001 Review that have not yet been acted upon.

1.3.2 Bid Adjustments

Although the Contract Data Report numbers, particularly those for NNI bid adjustments, seem to indicate an upward swing in contracts awarded Nunavut firms and Inuit firms, it is not possible to come to any firm statistical conclusions based on only three years of data. However, the Review Committee has concluded that even a shift from 24% of contracts won in 2000-01 by Inuit firms to 37% in 2002-03 does not represent a speedy enough shift towards achieving the "Inuit Participation" objective of the NNI Policy.

A number of the Committee's recommendations address the issue of Inuit participation. The most important, in the context of the existing Policy, is to change the bid adjustments in tenders and construction RFPs to 10% for Nunavut firms, 6% for Inuit firms, and 4% for local firms, from the current 14%, 3% and 3%.

1.3.3 Bonuses and Penalties

After listening to hearings and reading presentations from Nunavummiut and from extra-Territorial businesses, the Review Committee has concluded that the present system of bonuses and penalties does not do enough to either reward companies who are making extra efforts to hire Inuit, or to penalize firms that fall short of required minimum levels of Inuit labour. In order to provide more incentive for all firms (Inuit, Nunavut, or extra-Territorial) to hire Inuit, and to improve their chances of winning bids by using anticipated bonuses to reduce bid prices, the review Committee recommends that bonuses be increased from their current level to 1% of total payroll for every 1% achieved above specified minimums.

The Committee also recommends closing a loophole in the penalties system. In the past three years, contracting authorities have been giving bid adjustments to firms committing to levels of Inuit employment above the minimum. This procedure has allowed firms to increase their opportunity to win contracts through the bid adjustment without penalty if they fall short of their forecast levels of employment. The Committee has recommended that no additional bid adjustment apply on levels of Inuit employment beyond the minimum threshold set in bid documents. Bonuses and penalties will apply to the levels stated in tender documents, and in order to discourage firms from committing to levels of Inuit employment they cannot attain, the Committee recommends that penalties be increased to 2% of total payroll for every 1% that firms fall below the minimum.

1.3.4 Subcontracts

An area of the NNI Policy that is not sufficiently well understood is the effect of NNI adjustments on subcontracting for large construction contracts. In many cases the general contractor's portion of a large contract is only 15-20%, with the rest made up of subcontracts. All general contractors, whether from inside Nunavut or elsewhere, can improve their chances of winning a bid substantially by using Nunavut, local and Inuit firms as subcontractors. This process works not only to the benefit of all companies who are acting as general contractors; it also provides considerable benefit for smaller and more specialized local and Inuit firms. The review Committee recommends that the GN institute some simple procedures to improve the chances of Nunavut subcontractors to get work on projects.

1.4 OTHER SUBSTANTIVE ISSUES

The NNI Review Committee received presentations and submissions on a number of topics about which the Committee determined it could make no concrete recommendations. These are outlined below.

1.4.1 Article 40 Inuit Firms

Some of the firms that made submissions to the Committee requesting recognition under the NNI are companies recognized by NTI as Inuit firms under Article 40.1.3 of the Nunavut Land Claims Agreement. These firms are owned 50% by Nunavut Inuit and 50% by Inuvialuit, and the firms are listed in the Inuvialuit Business List. The 2003 NNI Comprehensive Review Committee is unanimous in its agreement that the issue of whether these firms are to be recognized within the bid adjustment mechanism should be resolved, and that a process for this purpose should be expedited.

1.4.2 Firms with Majority Ownership Held Outside Nunavut

The Committee also listened to presentations from firms that have been operating in Nunavut for a long time and bring Nunavut considerable ongoing benefits through employment and training. The Review Committee did not reach a consensus regarding providing these firms with recognition as a special category. These firms are likely to receive an increased advantage in the bidding process through the Committee's recommendations on bonuses, other employment incentives, and training incentives.

1.4.3 Sole Source Contracts

Sole source contracts have made up a large percentage (14-24.5%) of government contracts over the past three years. These contracts represent a sizeable portion of GN contracting that is occurring outside the guidelines of the NNI Policy, and therefore beyond its economic development objectives.

In the practice of sole-source contracting there is a clear problem of Inuit and Inuit Firms being under-represented. 18.5% of all contracts are sole-sourced but, by contrast, Inuit firms' share of this is only 1-3%. A review of all sole sourcing should be done by PW&S and the results reported to the Review Committee. A suggested solution to this problem may be to develop an approved list of available Inuit and Nunavut firms that would have to be approached first on any sole sourced contract and awarded the contract provided that the expertise and the price are acceptable.

1.5 CONCLUSIONS

1.5.1 NNI as an Economic Development Tool

The NNI Policy is one of the GN's main tools for economic development, attempting to leverage change to the structure of the Nunavut economy through government contracting. So far the main focus of the NNI Policy has been to effect development objectives through business ownership, using the bid adjustment system. By increasing the focus on employment and training in its recommendations, the Comprehensive Review Committee has underlined the need for a wider range of economic development initiatives to take place through the NNI Policy.

The *Nunavut Economic Development Strategy*, recently released by the Government of Nunavut, NTI and more than 20 other Nunavut-based groups will provide an important context for this Comprehensive Review. The Work Plan needed to realize the *Nunavut Economic Development Strategy*, to be developed by the members of the Nunavut Economic Forum, will provide an opportunity to communicate the NNI Policy and pursue its consistent application in the context of overall government economic planning.

The application of the NNI Policy in a more vigorous manner in the areas of training and employment makes communication and cooperation important between GN departments

including Pubic Works and Services (PW&S), Sustainable Development (SD), Community Government and Transportation (CG&T) and Education as well as with federal agencies and non-government bodies.

1.5.2 Policy Implications

Along with the requirement for better communications between and within GN departments, an improved NNI Policy will also require increased participation from Government Agencies, Crown Corporations, and Municipalities.

The GN and PW&S in particular will be required to make efforts to apply the NNI Policy consistently, and to revise the Contract Procedures to correspond closely to the NNI Policy.

Some of the initiatives outlined in the recommendations will require a high level of policy integration among several departments and agencies. Training initiatives, in particular, will require the cooperation of the GN departments of PW&S, CG&T and Education, as well as the Nunavut Arctic College, the Nunavut Apprenticeship Board, the Nunavut Construction Association, and the economic development arms of the Regional Inuit Associations.

1.5.3 Appeals and Arbitration

The issue of the Terms of Reference for the Appeals Board was raised by some presenters but was dealt with outside the review process. In accordance with the August 4, 2002 "Agreement of Settlement" between NTI and the GN, a facilitator was retained to resolve this issue between the parties. All outstanding issues were resolved and the parties adopted the Terms of Reference for the Board as submitted by the facilitator. The Committee therefore recommends that the wording of S. 18 of the NNI Policy be replaced with the language contained in Appendix 6, that consequential amendments to the Government Contracting Regulations be made, that the Appeals Board be established as soon as possible, and that the inclusion of the Terms of Reference of the Appeals Board in the Government Contracting Regulations be considered by the Review Committee during the 2004 Annual Review.

1.5.4 Financial Implications

Finally, it is important to note that the recommendations that appearing in this report have financial implications for the government of Nunavut. Some may have significant costs attached to their implementation and this will need to be taken into consideration in developing implementation strategies. However, the committee unanimously feels that the costs of not addressing these issues will be much higher in the long term.

2.0 INTRODUCTION

The question underlying the 2003 NNI Comprehensive Review is, "Does the NNI Policy work?" The conclusion reached by the Review Committee is that it has only been partially effective.

Some of the trends marking the progress of the NNI Policy to date can be seen in the Contract Data Reports from the past three years. Major areas documented in the Data Reports include:

- All Contracts
- Small Contracts
- Local Contract Authorities (LCAs)
- Large Contracts - Including Goods
- Large Contracts - Excluding Goods
- Sole Source Contracts
- Contracts Awarded as a Result of NNI Bid Adjustments

A Summary of the Contract Data Reports appears on pages 18 and 19. To obtain copies of the complete reports, contact the Government of Nunavut, Public Works & Services NNI Policy Advisor, or find them on the www.gov.nu.ca/pws website.

The 2003 NNI Comprehensive Review Committee has made some effort to limit the number of recommendations being brought forward. On the other hand, it has taken its mandate for a comprehensive review seriously, and attempted to look carefully at all aspects of the NNI Policy and their context. In doing so, it has also recognized the need for a large number of changes and additions to the policy. Many of the Committee's recommendations reflect the need to modify the bid adjustment system now in place. Another significant number of recommendations acknowledge the importance of employment and training incentives to the establishment of a truly effective policy

The NNI Policy is one of the GN's main tools for economic development, attempting to leverage change to the structure of the Nunavut economy through government contracting. So far, the main focus of the NNI Policy has been to effect development objectives through business ownership, using the bid adjustment system. By increasing the focus on employment and training in its recommendations, the Comprehensive Review Committee has underlined the need for a wider range of economic development initiatives to take place through the NNI Policy.

Finally, it is important to note that some of the recommendations that appear in this report have financial implications for the government of Nunavut and that implementing some of these recommendations will only be possible over time.

2.1 CONTEXT

The Government of Nunavut's contracting preference policy, the *Nunavummi Nangminiqaqtunik Ikajuuti* (NNI Policy) came into effect April 1, 2000. The Policy was created by the new Government of Nunavut (GN) in close collaboration with Nunavut Tunngavik Inc. (NTI).

The NNI Policy originated through a combination of the Business Incentives Policy that the GN inherited from the Government of the Northwest Territories (GNWT) and the immediate need for the new Government to respond to its obligations under the Nunavut Land Claims Agreement (NLCA), particularly Article 24 "Government Contracting". The GN also inherited a set of "Contract Procedures for the Nunavut Settlement Area" (ratified in 1997), which had been developed by the GNWT in consultation with NTI to address the GNWT's Article 24 obligations.

The main objective of the NNI Policy is to establish incentives for Nunavut businesses through a preferential government contracting policy, in order to foster the development of a more diverse economy than the one present when Nunavut came into being in 1999. The people who established the original Policy - the GN / NTI Contracting Working Group - placed a great deal of emphasis on providing incentives for ownership, as the first order of benefit from business activity. Although secondary orders of benefit, such as employment and training, were alluded to in a few places, a comprehensive framework for achieving significant benefit for Nunavummiut through employment and training was not developed.

As the NNI Policy was being developed in 1999-2000 little was known about the success of the GNWT Business Incentives Policy. The GNWT had never carried out a full examination of its effectiveness. Furthermore, no data were available to track the progress of the "Contract Procedures for the Nunavut Settlement Area". The GN / NTI Contracting Working Group recognized that they were creating something new and untried. As a consequence, they agreed that mechanisms would have to be built into the Policy to allow for it to be fine-tuned, depending on the type of results it was achieving. Adaptive features of the NNI Policy include:

- Recognition that percentages awarded in bid adjustments to Nunavut, local, and Inuit firms are subject to change over time;
- Recognition that the amounts assessed for bonuses and penalties could be changed;
- Provision for periodic reviews of the Policy; and
- An appeal and arbitration function.

Despite these features, the contracting policy developed by the GN/NTI Contracting Working Group still had many elements in common with the GNWT predecessor.

3.0 SCOPE OF THE REVIEW

The purpose of the 2003 Comprehensive Review of the NNI Policy was to evaluate the GN's progress in achieving the specific objectives of the NNI Policy. The Review should, at the same time, see if the GN is meeting its general obligations as laid out in Article 24 of the *Nunavut Land Claims Agreement.*

The Terms of Reference for the 2003 NNI Comprehensive Review Committee state that "The Review Committee will conduct a comprehensive review of the NNI Policy including but not limited to:

- A review of GN contracting data, subject to or exempted from the NNI Policy, from the establishment of the Policy on April 1, 2000 to March 31, 2003;
- A review of the substance and application of the policy to determine the extent to which the NNI Policy meets the objectives set out in Article 24 of the NLCA and of the objectives of the NLCA in general;
- A review of the substance and application of the policy to determine the extent to which the NNI Policy meets the objectives set out in sections 7, 8 and 9 of the policy;
- A review of the recommendations of the previous review and their implementation;
- A review of the monitoring and enforcement concerns that may have arisen or may arise out of the implementation of the NNI Policy; and
- A review of the results of all submissions and input received through community consultations and written submissions from third parties, including submissions prepared for the 2002 Annual Review.

The Terms of Reference for this review are attached as Appendix 1.

The 2003 Comprehensive Review is the GN's first attempt to assess and analyze the NNI Policy and to consider changes in structure or content.

The Review Committee has used a number of methods to gather data, including public consultations in six different Nunavut communities and written submissions from interested parties, as well as input and deliberation from Committee members and advisors. A summary of what the Committee heard in the public consultations is attached as Appendix 3. The written submissions can be obtained from the Government of Nunavut, Public Works & Services NNI Policy Advisor, or can be read on the www.gov.nu.ca/pws website.

In preparing this report, the Review Committee recognized three levels of changes that might be necessary:

a) Changes to the NNI Policy;
b) Changes to procedures currently being used by various GN Departments to implement the NNI Policy; and
c) "Systemic" changes - broad policy recommendations that go beyond the existing scope of the NNI Policy.

Under the NNI Policy, Cabinet may make changes to the Policy so long as they are consistent with the obligations of the Government of Nunavut in Article 24 of the NLCA. Article 24 also dictates that changes in the maintenance of preferential procurement policy, procedures and approaches be made in collaboration with Nunavut Tunngavik Inc.

3.1 COMPOSITION OF THE REVIEW COMMITTEE

Members of the Review Committee include:

NTI	**Government of Nunavut**
Alastair Campbell NTI (Co-chair)	Ron Janusaitis GN (Co-chair)
Wilfred Wilcox	Jack Donegani
Philip Tagoona	Barry Cornthwaite
Laura Kowmuk	Christina Ennis - Secretary
Brian McLeod	

Advisors:

NTI:	**Government of Nunavut:**
John Merritt	Brent Boddy
Clare Basler	Theresa Chandler
John Bainbridge	Bonnie Osborne
	Kathy Okpik
	Doug Garson

Internal Advisory Committee - Government of Nunavut:

Kathy Stinson	Department of Education
Roger Hughes	Department of Finance
Doug Sitland	Department of Community Government and Transportation
Marcus Bermann	Department of Sustainable Development
Ed McKenna	Department of Sustainable Development
Doug Garson	Department of Justice

3.2 KEY FEATURES OF THE NNI POLICY

The NNI Policy has the following objectives:

(a) Good Value and Fair Competition
To secure goods and services for the Government of Nunavut at the best value, recognizing the higher cost of doing business in Nunavut, and using a contracting process that is clear, fair and equitable.

(b) Strengthening the Nunavut Economy
To build the economy of Nunavut and its communities by strengthening business sector capacity and increasing employment.

(c) Inuit Participation
Subject to ss.16(2), to bring about a level of Inuit participation in the provision of goods and services to the Government of Nunavut that reflects the Inuit proportion of the Nunavut population.

(d) Nunavut Education and Training
Subject to ss.16(2), to increase the number of trained and skilled Nunavut Residents in all parts of the workforce and business community to levels that reflect the Inuit proportion of the Nunavut population.

All of these objectives are considered to be of equal weight. They were intended to balance the requirements of the GN as a public government to implement a contracting policy that is fair and which provides "best value", a term imported from federal contracting practice that includes social and economic development goals, rather than "lowest price", which generally prohibits much consideration of any other factors.

Sections 8, 9, and 10 lay out the deeper political and legal context of the NNI Policy, making reference to the Bathurst Mandate, the Clyde River Protocol, and the NLCA as foundation documents.

The NNI Policy uses three main tools in its attempt to achieve its own objectives as well as the of the Government of Nunavut's obligations under Article 24:

- **Bid adjustments for public tenders**, including considerations for Inuit ownership, Inuit employment (further divided into Labour and Management), and training opportunities for Inuit (NNI Policy Section 11);
- **Evaluation criteria in Requests for Proposal (RFPs)** that include considerations for Inuit ownership and Inuit employment (NNI Policy Section 11);
- **Bonuses awarded or penalties levied** to contractors based on minimum levels with respect to Inuit participation in employment, project management, and training, as stipulated in tenders or RFPs (NNI Policy Sections 12 & 13).

The cornerstone of the 2000 NNI policy is a bid adjustment process outlined in Section 11. The current bid adjustment adjustments on public tenders are 14% for Nunavut ownership, 3% for local ownership, and 3% for Inuit ownership. Adjustments for RFPs are 10% for Inuit employment and 5% for Inuit ownership.

Sections 12 and 13 promote Inuit employment through a system of bonuses (or penalties) assessed, based on bidders' ability to exceed (or fail to attain) minimum levels of Inuit labour stipulated by contracting authorities on a contract-by-contract basis.

The original GN/NTI Contracting Working Group recognized the need to include a number of mechanisms within the policy to ensure that the it was being applied appropriately on individual contracts as well as being applied consistently over the long term. These mechanisms include:

a) Monitoring and enforcement provisions to track individual contracts (NNI Sections 14 & 15);

b) Appeals from an award by contractors to a Contracting Appeals Board made on the ground that a Contracting Authority has erred in the application of the NNI Policy (NNI Section 18); and

c) Annual reviews to fine tune, and periodic comprehensive reviews to make larger adjustments, to the NNI Policy (NNI Policy Sections 16 & 17).

Section 20 of the NNI Policy provided a two-year transition period for firms that do not qualify as Nunavut businesses under the NNI Policy. Most of these firms had been "grandfathered" from the GNWT Business Incentives policy that Nunavut inherited, and had the majority of their ownership held outside of Nunavut. In 2002, the Government of Nunavut extended this transition period by one year.

3.3 CHALLENGES

The NNI Policy attempts to balance different types of interest. These include the NLCA requirements to provide various types of preference for Inuit and Inuit firms through government contracting, and the GN's need, as a public government, to treat all Nunavummiut and Nunavut businesses as fairly as possible. Other conflicting interests include those of small and large firms, smaller and larger communities, and the demand for providing Nunavut services at a reasonable cost. To address these conflicting priorities, the GN should focus on its expenditures within Nunavut and make the best use of existing territorial resources.

Areas of challenge identified by the 2003 NNI Comprehensive Review Committee include:

a) Recommendations from 2001 NNI Review
b) Absence of 2002 NNI Review
c) Bid adjustments
d) Penalties and Bonuses
e) Inuit Employment
f) Training (especially trades training and apprenticeship)
g) Status of registered Nunavut and Inuit firms
h) Article 24 requirements not covered in current NNI Policy
I) Companies recognized by NTI under Article 40 of the NLCA
j) Contract Procedures and Procedural gaps among GN Departments
k) Internal consistency of the NNI Policy
l) Consistency with the Contracting Policy for Territorial Parks
m) Nunavut manufacturing
n) Contributions of non-Nunavut companies
o) Ongoing research and data collection
p) Enforcement and monitoring provisions
q) Sole source contracts
r) Cabinet responsibilities and prerogatives
s) Continuity of the Review Committee and oversight of review recommendations

A set of recommendations has been made to cover all these areas of concern, as well as a number of smaller housekeeping items.

4.0 SUMMARY OF INFORMATION FROM THE CONTRACTING DATA REPORTS 2000-2001, 2001-2002, 2002-2003

4.1 Government of Nunavut Contract Information from the Annual Data Reports

Information on:	Total Value	Total #	% To Inuit	$ Value Inuit	$ Value Nunavut	Total $ Value Inuit & Nunavut
All Contracts						
2000-2001	$85,152,650	11,298	41%	24%	38%	62%
2001-2002	$94,040,904	12,851	42%	39%	27%	66%
2002-2003	$87,219,406	11,181	41%	37%	29%	66%
Small Contracts						
2000-2001	$4,188,381	1,038	19%	20%	29%	49%
2001-2002	$5,194,623	1,120	25%	20%	35%	55%
2002-2003	$5,216,255	1,321	29%	27%	31%	58%
Local Contract Authority (LCA)						
2000-2001	$4,109,878	9,466	43%	40%	46%	86%
2001-2002	$4,571,731	10,980	45%	36%	51%	87%
2002-2003	$3,961,791	9,113	43%	34%	54%	88%
Large Contracts-Plus Goods						
2000-2001	$76,854,391	794	27%	23%	39%	62%
2001-2002	$82,274,548	841	26%	40%	26%	66%
2002-2003	$78,041,359	747	30%	38%	28%	66%
Large Contracts-Less Goods						
2000-2001	$60,004,875	229	15%	20%	29%	49%
2001-2002	$69,207,496	311	18%	42%	26%	68%
2002-2003	$64,399,614	234	26%	39%	29%	68%
Sole Sourced Contracts Excluding Goods						
2000-2001	$11,084,263	18.5%	3%	5%	3%	8%
2001-2002	$16,905,496	24.5%	3%	8%	32%	40%
2002-2003	$8,664,148	14%	3%	7%	50%	57%

4.2 Government of Nunavut Contracts Affected by NNI Adjustment

	Contracts	Value	Inuit	Nunavut	Total
Contracts Due to NNI 2000-2001	46 out of 259 (18%)	$3,078,134 (6%)	37%	58%	95%
Contracts Due to NNI 2001-2002	41 out of 774 (6%)	$2,403,943 (5%)	51%	36%	87%
Contracts Due to NNI 2002-2003	30 out of 324 (10%)	$16,703,883 (29%)	53%	46%	99%

4.3 Inuit Labour Component of Government of Nunavut Contracts

Type of Contract	Required	Bid	Achieved
Minor/ Maintenance / Services			
2000-2001	35%	59%	55%
2001-2002	30%	53%	47%
2002-2003	35%	51%	54%
Major Construction			
2000-2001	29%	26%	38%
2001-2002	16%	25%	23%
2002-2003	26%	34%	23%

4.4 Bonuses Paid as a Result of the NNI Policy

Bonuses Paid	
2000-2001	$123,030
2001-2002	$148,386
2002-2003	$24,582

4.5 Penalties Levied as a Result of the NNI Policy

Penalties Awarded	
2000-2001	$135
2001-2002	$10,459
2002-2003	$2,485

5.0 SECTION-BY-SECTION REVIEW OF THE NNI POLICY

The Review Committee recommendations are incorporated into the sections of the report to which they apply. A compilation of all recommendations is included as Section 8.

Each recommendation gives an indication of the timeframe in which it should be implemented. Recommendations identified as "immediate" are intended by the Committee to be implemented within the next six months; "medium term" indicates implementation within the next 2 years; and "long term" signifies implementation within the next 5 years.

5.1 NNI Policy Sections 1 -10

Sections 1 - 10 of the NNI Policy represent the long-term legal and policy framework within which the NNI Policy operates. For the purposes of the First Comprehensive Review of the NNI Policy, the Review Committee has no changes to recommend for these sections except for Section 7.

These sections are:

Section 1 **Coming Into Effect**
Section 2 **Replacement**
Section 3 **Authority**
Section 4 **Title**
Section 5 **Application**
Section 6 **Definitions**
Section 7 **Policy Objectives**
Section 8 **The Bathurst Mandate**
Section 9 **The Clyde River Protocol**
Section 10 **Relationship To Nunavut Land Claims Agreement (NLCA)**

Note: Section 6: "Definitions" refers the reader to a complete set of definitions in Appendix A of the NNI Policy. The Review Committee recommends no changes to Section 6 as such. Recommended changes to specific definitions will be covered in the discussion of Appendix A.

5.1.1 NNI Policy Section 7 Policy Objectives

In order to dispel some concerns expressed in public meetings that the Objectives appear to be placed in order of priority, and are being interpreted by contracting authorities as such; the following recommended wording is proposed.

Recommendation # 1 **Policy Objectives**

That the following paragraph be inserted at the end of section 7.1:
"These objectives are not listed in order of importance and should not be interpreted as such."

Type of Change: **Policy Change - Section 7.1**
Timeline: **Immediate**

5.2 NNI Policy Section 11 Evaluation Process and Bid Adjustment

The cornerstone of the 2000 NNI Policy is the bid adjustment process as outlined in Section 11.

5.2.1 Bid Adjustments

The current bid adjustment percentages on public tenders are: 14% for Nunavut ownership, 3% for local ownership, and 3% for Inuit ownership. The NNI Policy does not provide for adjustments in competitive tenders for employment levels or training programs. In practice, as discussed below, contracting authorities have been making bid adjustments based on levels of Inuit employment to which contractors commit in their bids.

Bid adjustments for Requests for Proposal (RFPs) recognize both benefits from ownership and from employment. In the NNI Policy, evaluations based on 100 points are expected to award 5 points out of 100 for relative levels of Inui ownership and 10 points out of 100 for relative levels of Inuit employment.

Adjustments for Inuit ownership are intended to increase Inuit participation in the economy so that over time it reaches a "representative level", following the logic of Article 23 and Article 24 Section 24.3.6 (c) of the NLCA. This goal is also stated in the "Inuit Participation Objective" in the NNI Policy itself.

When percentages were set for bid adjustments in the original NNI Policy, the GN/NTI Contracting Working Group anticipated that changes might be required to the relative adjustments allocated to Nunavut, Local, and Inuit ownership in order to ensure effective incentives to Nunavut, Local, or Inuit firms. Any change was to be based on the results of the current adjustments as found in the contracting data.

Data from the first three years indicates that Inuit firms are not increasing their participation in total contracts awarded at a significant rate. Total contracts won by Inuit firms remained constant at 41% in 2001 and 2003. However, the dollar value of contracts won by Inuit firms increased from 24% in 2001 to 37% in 2003. This change represents a

significant increase, but at a level still far below the target level. The data reports also show an upswing in the number of Nunavut and Inuit firms winning contracts through bid adjustments.

The slow increase in Inuit participation in bidding presents an argument for increasing the percentage awarded for Inuit ownership in competitive tenders. One of the written submissions to the Review Committee advocated that both Inuit and Local content be increased, and Nunavut content decreased, in order to give Inuit firms and local firms in smaller communities more of a competitive advantage.

The Review Committee has concluded that changes should be made to the percentage weightings allocated to the three categories of bid adjustments, and arrived at the following recommendation.

Recommendation # 2 **Bid Adjustment Percentages**

That the bid adjustments be modified to represent levels that provide a greater advantage for Inuit firms. It is recommended that the Nunavut firms adjustment be changed to 10% and the Inuit firm adjustment be changed to 6% and that the Local firm adjustment be changed to 4%.

Type of Change: **Policy Change**
Timeline: **Immediate**

Some participants in the public hearings stated that the bid adjustment on large construction contracts gives Nunavut firms a much greater advantage than just compensating them for the extra costs of doing business in the north. These speakers argued that adjustments of this size provided encourage inefficiency in the system and are an unwise use of scarce GN resources. For example, an adjustment of 14% for Nunavut content on a $1 Million contract totals $140,000; the same adjustment on a $7 Million contract is worth $980,000.

However, when the Review Committee reviewed calculations for a number of tenders, it became clear that the situation in an actual tender is more complicated than this simple calculation. Because bid adjustments are made according to the different components of the contract, including items like accommodation and subcontracts, it is possible for a non-Nunavut firm to achieve quite high levels of bid adjustments through the use of Inuit and Nunavut subcontractors. This allows for bids to remain competitive.

5.2.2 Firms with Majority Ownership Held Outside Nunavut

The Committee listened to presentations from firms that have been operating in Nunavut for a long time and bring considerable ongoing benefits to Nunavut through employment and training. The Review Committee did not reach a consensus regarding providing these firms with recognition as a special category. These firms should receive increased incentives and advantages in the bidding process through the recommendations on bonuses, other employment incentives, and training incentives.

5.2.3 Eligibility Criteria

In the course of the review, some presenters questioned the status of some firms registered in the Inuit Firm Registry. The status of certain firms listed in the GN's NNI Business Directory also received consideration.

The criteria for registering an Inuit firm are governed by Article 24 of the Nunavut Land Claims Agreement. Similarly, the definition of a Nunavut business is contained in Appendix A to the NNNI Policy. In some cases the nature of the criteria and the manner in which they are applied may not be clear to all GN or NTI officials, to potential applicants, or to the public generally.

The Committee agrees that the bid adjustment entitlement must be based on criteria that are clearly understood and fairly applied. For this reason, the Committee recommends that both parties review all currently registered Nunavut businesses and Inuit firms to ensure the validity of such registrations, take steps to ensure that the registration criteria are clearly understood, and establish a mechanism to bring information on firms or businesses that may not be correctly registered to each others' attention.

Recommendation # 3 **NNI Nunavut Firm Registry and Inuit Firms Registry**

That, prior to the next Annual Review,

The NTI:

- Review all firms registered in its Inuit Firms Registry to ensure compliance with Article 24 of the NLCA.
- Publicize the criteria used to determine entitlement to Inuit firm registration pursuant to Article 24 of the NLCA.
- Maintain an up to date Inuit Firms Registry on the NTI website with a link to the Nunavut Firms Registry on the Government of Nunavut web site.

Government of Nunavut

- Review all firms registered as Nunavut firms to ensure their entitlement to registration pursuant to the NNI Policy.
- Publicize the criteria used to determine eligibility for registration as a Nunavut firm pursuant to the NNI Policy.
- Maintain an up to date Nunavut Firm Registry on the Government of Nunavut Public web site with a link to the Inuit Firms Registry on the NTI web site.

It is further recommended that:

- The Government of Nunavut and NTI notify the other party in writing of any information that it has, which indicates that a Firm, registered on the other party's list, may not be eligible to be so registered.
- In any such case, the information will be provided to the said firm, identifying either NTI or the GN as the source of the information, in order to provide the firm with the opportunity to respond to the information in good time prior to any decision that may be made regarding its removal from the specified list.

Type of Change: **Policy Change**
Timeline: **Immediate**

During public consultations, particularly in Iqaluit, two presenters representing non-Nunavut firms expressed the opinion that the bid adjustment system, or any other system of preference based on ownership should be done away with, and replaced by a system that measures benefit and rewards bidders through employment and training incentives. **[See Recommendations under Section 6.2.2 "Employment and Training"]** Numerous other speakers, in all communities, particularly those representing small Inuit firms, stated that an incentive supporting Inuit firms must be preserved.

5.2.4 Article 40 Inuit Firms

Some of the firms that made submissions to the Committee requesting recognition under the NNI are companies recognized by NTI as Inuit firms under Article 40 of the Nunavut Land Claims Agreement. These are corporations owned 50% by Nunavut Inuit and 50% by Inuvialuit of the Western Arctic, and the firms are listed in the Inuvialuit Business List. The 2003 NNI Comprehensive Review Committee is unanimous in its agreement that the issue of whether these firms are to be recognized within the bid adjustment mechanism should be resolved, and that a process for this purpose should be expedited immediately.

NLCA Article 40.1.3 states:

> *40.1.3 Nothing in the Agreement shall limit the negotiation of agreements between Inuit and any other aboriginal peoples respecting overlapping interests or claims, except that the provisions of such agreements shall not be binding on Government or any person other than Inuit and those aboriginal peoples without the consent of Government.*

5.2.5 Use of Employment Adjustment in Public Tenders

A current practice of GN contracting authorities, encountered in the course of consultations, was the practice of giving bid adjustments to firms based on the levels of Inuit employment they forecast for the project they are bidding on. For example, if the minimum level for Init employment is set at 35% by the contracting authority and a company bids 55%, the company is given a bid adjustment on the greater amount when calculating the adjustment on the form in Appendix B-2 of the GN construction tenders form. At the same time, no penalty is assessed for not meeting these projected levels of employment in bids, but rather penalties are assessed on the lower amount set in the tender. In other words, companies can inflate their Inuit employment figures in order to secure a contract, and are not penalized for not meeting levels committed to. Speakers in public meetings pointed out that this system can be abused. **[See Recommendation #11 under Penalties and Bonuses]**

5.2.6 Leases

Some participants in public hearings as well as some members of the Review Committee asked that the Comprehensive Review examine the idea that the NNI Policy not apply to contracts for leases entered into by the GN or its Agencies. One reason given for this position was that the current system allows a Nunavut company to win a lease contract based on a bid adjustment, and then turn it over or sell it to a non-Nunavut company. The Review Committee agreed that bid adjustments should continue to apply to leases, giving Nunavut firms a chance to build both equity and capacity, if this loophole is closed

Any advantage given as a result of an NNI Policy Bid adjustment to win a lease should apply only so long as the lease is owned and managed by a NNI Policy qualified firm. Since leases are for such long periods of time and for significant amounts of money, it is important to ensure that any advantage gained as a result of an NNI Policy adjustment remains in Nunavut and is not transferred to southern firms. This approach will also provide some protection against other potential abuse of the NNI Policy where leases are concerned.

Recommendation # 4 **Commercial Leases**

That two new clauses be added to all Government of Nunavut Commercial Leases (specific language to be developed by Department of Justice)

1) Where a lease is won as a result of an NNI Bid Adjustment, the agreed rent will remain in force only as long as the lease is owned and managed by a company that is on the Nunavut Firm Registry or the Inuit Firm Registry. Should the lease be transferred to a firm that does not qualify for either list, the value of the lease will be adjusted to the lowest bid amount prior to the NNI bid adjustment.

2) Any firm that wins a lease as a result of an NNI bid adjustment must report annually confirming their continued eligibility and confirming that there have been no substantive changes in ownership. Failure to do so would result in the lease being adjusted as above.

Type of Change: **Policy Change**
Timeline: **Immediate**

5.2.7 Structural Changes to NNI Policy Sections 11, 12, and 13

The Review Committee believes that Section 11 does not show clearly enough the adjustments, rebates, penalties and bonuses for different types of contracts.

Recommendation # 5 **Structural changes to NNI Policy Sections 11, 12, &13**

That the structure of Section 11 of the NNI Policy be changed to show more clearly the appropriate adjustments, rebates, penalties and bonuses for four different types of contracts: Construction, goods, services, and leases.

Type of Change: **Policy Change - Sections 11, 12, 13**
Timeline: **Immediate**

~~5.2.8 Procedures That Encourage Use of Nunavut and Nunavut Inuit Firms~~

The Review Committee determined that some simple procedures should be implemented to improve the chances of Nunavut subcontractors to getting work on projects. For example, the Policy could require general contractors on construction contracts to invite Nunavut and/or local companies to bid on subcontracts. Further, where sufficient competition is present, the GN should issue only invitational tenders/proposals to Nunavut businesses.

When these procedural changes are approved, the GN will need to ensure that it is receiving fair value. Through research and experience the government will need to determine an upper limit for invitational tenders and have the option of seeking bidders /proponents from outside Nunavut if none of the local bidders can meet this upset price.

Recommendation # 6 **Sub-Contractors**

Require general contractors on construction contracts to invite Nunavut and Inuit or local companies to bid on subcontracts where they are not already using Nunavut and Inuit or local companies as subcontractors.

Type of Change: **Contracting Procedure**
Timeline: **Immediate**

Recommendation # 7 **Invitational Tendering**

Where sufficient competition is present, 3 or more capable and interested bidders, issue invitational tenders/proposals only to Nunavut businesses. Any invitational tender must include Nunavut vendors if they exist. Review and revise if necessary the mechanism for ensuring Nunavut businesses have equitable access to government contracts (sole source and invitational)

Type of Change: **Contract Procedures**
Timeline: **Immediate**

5.2.9 Unbundling Contracts

The committee heard clearly that larger contracts need to be carefully examined and broken down into smaller contracts, where possible, to allow for more Inuit firms to have a chance to bid on the component parts (following the requirements of Article 24.4.2 (b), (c), and (d)). While some progress has been made in this area, there is still a lot more that can be done. This is an area of change that can have an immediate and tangible effect on local firms.

Careful consideration should be given to ensure that this process is not pushed to a level where the integrity of the project is compromised either due to small parts of the contract not receiving bids or the costs of one component jeopardizing the entire project.

The mechanism proposed for unbundling construction contracts is to use a Bid Depository system that would have sub-trades tendered separately. General Contractors would then be required to select from tenders submitted by sub-trades in preparing their own bids A side benefit to the Bid Depository system is that it eliminates bid shopping.

GN contracting authorities have testified that efforts are already being made to address this issue with respect to smaller contracts. The Review Committee should continue to monitor this issue.

No mechanism other than closer monitoring was proposed for better unbundling of contracts for goods only.

Recommendation # 8 **Unbundling of Contracts -**

That every effort shall be made to unbundle contracts where practicable and consistent with sound procurement management.

That consideration should also be given to the use of a Bid Depository as a method of encouraging the use of local sub-contractors and as a method of unbundling projects. This would be used for projects where the dollar value of the sub-contract is over $200,000.

Type of Change: **Policy Change and Contract Procedures**
Timeline: **Immediate**

5.2.10 Nunavut Manufacturing

The committee heard from a number of presenters that the Government of Nunavut is not doing enough to support Nunavut Manufacturing. Even with the bid adjustments available under the NNI Policy, this is not enough to support and protect fledgling manufacturing enterprises. A number of instances were cited where products that are manufactured in Nunavut were not favoured over similar products available in the south.

Given the higher costs of supplies and of doing business in Nunavut, some form of protection for local manufacturers should be implemented. A variety of businesses that are trying to succeed will most likely not survive without some form of preferential treatment for their products. The committee heard of instances where food products were actually shipped south by local producers and then bought back from southern distributors by the government.

The committee is not recommending that the government adopt a policy of support at all costs but rather one that will level the playing field for locally manufactured products. The government has a vested interest in supporting these entrepreneurs. Frequently, they have already them support in getting their businesses started as part of an economic stimulus to develop the economic base of Nunavut.

Where there are capacity issues with local suppliers, the government needs to plan ahead in placing orders in sufficient time to ensure that the local business can fill the order.

Recommendation # 9 **Nunavut Manufacturing**

That the GN Develop a list of products made in Nunavut and set either a cost adjustment when buying such products on government contracts or provide a rebate when such goods are purchased. The amounts should be set following an economic impact study on this issue.

Type of Change: **Policy Change**
Timeline: **Middle Term**

5.3 NNI Policy Section 12: Bonuses and Penalties NNI Policy Section 13: Maximum Bonuses and Penalties

The bonus and penalty system was designed to provide the GN with a feedback mechanism for setting Inuit employment and training levels. For example, if the GN found it was paying out large sums each year for bonuses to contractors who exceed required minimum levels of Inuit content, contracting authorities would adjust minimums to a higher level. The aim of the system was to gradually increase levels of Inuit employment where workers were available locally or from other nearby communities. If the process is working well the GN would pay out smaller amounts in bonuses and levy fewer penalties, and levels of Inuit employment would be optimised.

The original NNI Policy does not pay enough attention to benefits from employment and training incentives. Although Sections 12 and 13 of the NNI Policy describe the bonuses available for employing Inuit, the way levels of Inuit employment are calculated and the minimum levels set is not explained in either the NNI Policy or the supporting Contract Procedures. Descriptions of measures to be taken to reward training initiatives are also very limited.

5.3.1 Bonuses and Penalties

Total bonuses paid out to all companies have averaged $250,000 - $300,000 per year over the first three years. This figure is fairly low. At the same time, it appears that some contractors are making an effort to take advantage of bonus provisions. The Review Committee contends that the low figure for bonuses paid out likely indicates that the bonus percentages themselves are too low to encourage contractors to increase their efforts to surpass the set levels. The Committee also believes that the whole bonus system is poorly understood.

The total penalties assessed for failing to meet the minimum level of Inuit employment are extremely low. Over the last three years the total for all contracts combined has averaged about $4,500 a year. This would indicate that either the levels are set too low or that the penalties are not being assessed. Penalties assessed in 2002-03, according to the 2003 Contract Data Report, totalled $2,485.

A further anomaly in the system of assessing bonuses and penalties is the current practice of giving bidders a bid adjustment for their forecast levels of Inuit employment, with no penalty for not reaching those levels in the course of carrying out the subsequent contract. This practice has the potential to encourage contractors to inflate proposed levels of Inuit employment in order to win the contract on which they are bidding. The Review Committee heard some evidence to suggest that in some cases this may have occurred. There will be a need for the contracting authorities to ensure that the minimum levels are set appropriately to avoid both large bonuses and large penalties. This issue is addressed in Recommendations # 10 to 12 below.

The Contract Data Reports for the past three years show that contractors have consistently achieved higher levels of Inuit employment than what has been required in contracts, at least on construction contracts. At the same time, average levels set by contracting authorities have been very low in some cases, and certainly do not indicate much progress towards meeting Article 24.3.6 (c) of the NLCA "employment of Inuit at a representative level in the Nunavut Settlement Area work force".

With respect to penalties, it appears that they are not being implemented uniformly across the GN. One of the presenters at the Iqaluit consultation session suggested that in the past, if his company could demonstrate to contracting authorities that it had a good reason for not achieving stipulated Inuit employment levels, then penalties had been waived. The only statement about assessing penalties in the Contract procedures Manual is as follows:

11.13.2 *Progress claims may include an Inuit Employment Content Bonus component. The contract officer must ensure that the Inuit employment level is in excess of the minimum threshold percentage for Inuit employment level requirement. Conversely, the contract officer must levy the penalty required against the progress payment if the minimum level for Inuit employment has not been maintained.*

Section 12 of the NNI Policy does not describe how contracting authorities establish Inuit content levels either for tenders or for Requests for Proposals, nor is there an explanation in the Contract Procedures.

Recommendation # 10 **Increased Bonuses and Penalties**

That bonuses be increased to 1% of total payroll for every percentage point achieved above stipulated threshold levels for Inuit employment; and that penalties be set at 2% of total payroll for every percentage point under the stipulated minimum levels for Inuit employment.

Type of Change: **Policy Change**
Timeline: **Immediate**

Recommendation # 11 **Removal of Bid Adjustment on Inuit Employment**

That bonuses and penalties be paid based on the minimum Inuit labour component set by the contracting authority, and that no bid adjustment be given in the tendering phase for bidders estimates of Inuit content over and above the minimum required.

Type of Change: **Policy Change**
Timeline: **Immediate**

Recommendation # 12 **Establishment of Criteria for Minimums**

That the Government of Nunavut establishes criteria for setting minimum Inuit employment percentages and ensures that these criteria are put in the Contract Procedures Manual.

Type of Change: **Policy Change**
Timeline: **Immediate**

Recommendation # 13 Publication of Inuit Employment Levels

That the proposed minimum Inuit labour content be included for all construction projects on the list published each year in anticipation of the upcoming construction season. It should be made clear that feedback from interested persons is encouraged on these proposed levels prior to the issuing of the tenders.

Type of Change: **Policy Change**
Timeline: **Immediate**

The publication of such a list, with the proposed minimum Inuit labour levels included, will provide the contracting authority with input from all sources with an interest in the project and ensure that the minimum levels that are set are as accurate and realistic as possible.

5.3.2 Inuit Content: Employment & Training

The bid adjustment system mostly addresses benefits accruing to ownership and does not go very far in systematically addressing other levels of benefit - notably employment in management, regular employment, and training. Because these areas are of great importance to a renewed NNI Policy they are discussed separately, as Section 6.2 below.

5.4 NNI Policy Section 14 Monitoring and Enforcement Procedures
NNI Policy Section 15 Application of Monitoring and Enforcement

5.4.1 Procedures

Some Committee members expressed concern about the limited monitoring and enforcement of the NNI Policy to date. At present, the principal way the Policy is monitored is through the Annual Contract Data Reports. There does not appear to be a mechanism for tracking the use of the NNI Policy by Municipalities, GN Agencies or Crown Corporations.

The GN Contract Procedures Manual currently has the following section on monitoring ad enforcement:

Application of Monitoring and Enforcement Procedures

12.0.1 Each Contract Authority within the Government of Nunavut is responsible for monitoring and enforcement Contracts under which it expend funds.

12.0.2 Each Contract Authority within the Government of Nunavut shall provide monitoring and enforcement information to the Department of Public Works and Services in a manner that may be stipulated by that department.
12.0.3 The Government of Nunavut shall provide Nunavut Tunngavik Incorporated with information in a timely manner regarding the outcomes of its monitoring and enforcement activities.

Note: A full set of procedures will be inserted at a later date.

To date the only reports NTI has received regarding monitoring and enforcement activities are the annual Contract Data Reports. The GN has not provided NTI with any reports that analyze the data in these annual reports.

The GN should improve its application and review of the NNI Policy. However, while there are currently a number of people within PW&S, separate from the Contracts Unit, who deal with the NNI Policy, PW&S may not be the best department to handle the monitoring function since it is the main department that does contracting for government.

Recommendation # 14 Monitoring and Training Unit

That a unit be created in the appropriate department and provided with the resources, both financial and human, necessary to do the follow-up and training on the NNI Policy and to ensure consistency of application and consistency of reporting the required data in a timely manner.

Type of Change: **Policy Change**
Timeline: **Immediate**

Recognizing the high rate of staff turnover, the GN needs to offer ongoing training for people working directly with the NNI Policy, as well as ongoing workshops on interpreting the policy for all GN employees whose job functions are directly connected with any aspect of contracting. This type of training is imperative if the NNI Policy is to be effective.

To date, there is very little data available on the application of the NNI Policy by Crown Corporations, Government Agencies and Municipalities. There is, however, sufficient information to know that the use of the policy is often sporadic at best and non-existent at worst. The one piece of concrete information that the Committee was able to obtain indicates that only 50% of Municipalities are currently using the NNI Policy either completely or partially, and that not all funding agreements between the Government of Nunavut and Municipalities has the requirement that they use the policy as part of the agreement.

One piece of positive anecdotal information that the committee heard during its consultations was that the Housing Corporation is very aggressive in setting its Inuit Labour requirements and that the levels they set are quite high.

There may be cost implications to the Municipalities and Government Agencies as a result of their taking on their responsibilities under the NNI Policy. The Government of Nunavut will need to consider this when determining funding levels.

Recommendation # 15 **Applicability of NNI Policy**

That the government enforce Section 5.1 of the NNI Policy that stipulates that all municipalities, Crown Corporations, and Government Agencies are subject to the NNI Policy.

Further, that meetings be held with every municipality, Crown Corporation and Government Agency to make sure that they understand their responsibilities under this policy, provide the necessary training with regards to the application of the policy and the reporting requirements of the policy.

Type of Change: **Contract Procedures**
Timeline: **Immediate**

Nunavut businesses and individuals require information regarding goods or services currently being obtained from outside Nunavut, in order to decide whether or not they should try to provide the same goods or services locally. The publication of this information would benefit all Nunavummiut by developing the local economy and by helping to increase the availability of goods and services in Nunavut communities.

In the practice of sole-source contracting there is a clear problem of Inuit and Inuit Firms being under-represented. 18.5% of all contracts are sole-sourced but, by contrast, Inuit firms' share of this is only 1-3%. A review of all sole sourcing should be done by PW&S and the results reported to the Review Committee. A suggested solution to this problem may be to develop an approved list of available Inuit and Nunavut firms that would have to be approached first on any sole sourced contract and awarded the contract provided that the expertise and the price are acceptable.

Recommendation # 16 **Contracts with Outside Firms**

Publish at least annually in Nunavut newspapers a list of the items/services purchased from businesses outside Nunavut, including purchase price and relevant contract details. Immediately publish a list of all contracts issued to firms outside of Nunavut on the government public web site

Type of Change: **Contract Procedures**
Timeline: **Immediate**

5.5 NNI Policy Section 16 Periodic Review
NNI Policy Section 17 Review Committee

The Review process was intended to work at two levels: annual reviews to fine-tune the policy and analyse data trends, and periodic comprehensive reviews to assess the overall effectiveness of the NNI Policy.

So far, the review process has not achieved the results intended by the NNI Policy. The only Annual Review of those mandated by the Policy was conducted in the fall of 2001. A report was completed in the spring of 2002. The current report describes the findings of the first Comprehensive Review scheduled under the NNI Policy, and also includes some of the findings that would have appeared in the second Annual Review had it been completed.

Regarding the review process in relation to Article 24, Section 24.3.4 reads:

> *Subject to Section 24.9.2, the Territorial Government shall maintain preferential procurement policies, procedures and approaches consistent with this Article for all Territorial Government contracts required in support of Territorial Government activities in the Nunavut Settlement Area. The Territorial Government will consult with the DIO when developing further modifications to its preferential policies, procedures and approaches in order that the provisions of this Article may be met.*

During the first review the GN and NTI were at odds regarding the jurisdiction of the review. Although Article 24.3.4 of the NLCA is clear that NTI could review and comment on the Contract Procedures GN had developed, some members of the GN team did not believe the Review Committee's mandate went that far. NTI also felt it had the right to object to the limitations the GN was proposing for the appeals board. These disagreements, the decision to extend the period for application of Article 20 of the NNI policy for one year, and the delay in producing Annual Data Reports led to a breakdown of the joint review process.

An outcome of this divergence of outlook was the development and acceptance of a clear definition of "consultation", in the Settlement Agreement between NTI and the GN to resolve this issue. The Agreement states:

> *Consultation with respect to proposed new or altered Government of Nunavut policies to implement Article 24 of the Nunavut Land Claims Agreement shall mean, at a minimum:*
>
> *(i) The GN will provide NTI with notice of a matter to be decided in sufficient form and detail to allow NTI to effectively address the matter and to prepare its views on the matter;*
>
> *(ii) The GN will provide NTI with a reasonable period of time in which to prepare its views on the matter and to provide any such views to the GN;*

(iii) It is recognized that assessment of a reasonable period of time with respect to any aspect of consultation with NTI should take into account

- *the complexity of the matter,*
- *the economic significance of the matter,*
- *special cultural or community sensitivities,*
- *the need for NTI to consult regional or other Inuit organizations,*
- *availability of leaders or key advisors, and other logistical factors;*

(iv) The GN will give full and fair consideration to any such views provided by NTI on the matter; and

(v) *The GN will provide NTI with written reasons for rejecting or varying any views provided by NTI on the matter.*

Recommendation # 17 NNI Review Committee

It is recommended that the mandate of the Contracting Review Committee be changed to give it a 5-year mandate with the appropriate Terms of Reference similar to those for this Comprehensive Review, and that the Review Committee meet at least quarterly to discuss issues relating to the NNI Policy such as: its implementation, how it is functioning and the status of the implementation of its approved recommendations.

The GN and NTI should each appoint Co-Chairs. Each party should have up to four members to provide for regional input. The GN Co-Chair should be appointed from a Central Agency, ideally Executive and Intergovernmental Affairs, with the Chairs having the same decisional powers they have been given for this Comprehensive Review

Type of Change: **Policy Section 17**
Timeline: **Immediate**

This new mandate would provide the Contracting Review Committee with a clear mandate and an ongoing ability to follow-up on issues relating to the NNI Policy. With this standing committee in place, Annual Reviews and the five-year Comprehensive Review would be more easily done and coordinated. It would also provide a logical point of contact, on an ongoing basis, for anyone wishing to comment on the policy. The regularly scheduled meetings would provide for ongoing exchanges between the GN and NTI on NNI related issues. It would also provide a certain amount of monitoring of the implementation of the recommendations that are brought forward and approved.

This structure also provides for representation from the various regions for NTI and for representation from various departments for the GN, and possibly regional representation as well.

If the committee is to function properly, it will need access to financial resources. It would make sense that these resources be made available through the department from which the GN chair is named. Resources, either human or financial, will be needed to conduct studies on the effectiveness of various aspects of the NNI Policy. One example of particular importance will be the need, before the next Comprehensive Review to dedicate sufficient funds and resources to conduct a detailed study of the economic impact of the NNI Policy.

It will also be important to make the Annual Data Reports more useful by including information from all departments, Government Agencies and (if possible) Municipalities. Currently not all Government Agencies are required to report contract data to PW&S for the preparation of the annual Contract Data Reports. Incomplete data limits the usefulness of the reports and makes an assessment of the NNI Policy more difficult. As well, information relating to RFPs, sub-contracts and more detailed information on sole-sourced contracts needs to be included in the Contract Data Reports.

5.6 NNI Policy Section 18 Appeals and Arbitration

A major barrier to the implementation of the NNI Policy was agreement on a satisfactory appeals process and was raised by some presenters. However, in accordance with the August 4, 2002 "Agreement of Settlement" between NTI and the GN, the issue was dealt with outside the review process through a facilitator who was retained to resolve this issue between the parties. All outstanding issues were resolved and the parties adopted the Terms of Reference for the Board recommended by the facilitator

With the resolution of the issue, including agreement on the language of the new clauses that will be part of the NNI Policy, the following recommendation is made.

Recommendation # 18 Appeals and Arbitration

That Section 18 of the NNI Policy be replaced with the new Section 18 found in Appendix 6, that consequential amendments to the Government Contract Procedures be made, that the Appeals Board be established as soon as possible and that the inclusion of the Terms of Reference of the Appeals Board in the Government Contract Procedures be considered by the Review Committee during the 2004 Annual Review.

Type of Change: **Policy Change - Section 18**
Timeline: **Immediate**

5.7 NNI Policy Section 19 Financial Resources

The Review Committee recommends no changes to Section 19.

5.8 NNI Policy Section 20 Transition for Certain Businesses

Under section 20 of the NNI policy, 46 firms were dropped from the NNI list as of March 31, 2003. A number of these firms made presentations or written submissions to the Review Committee. Although none suggested reinstating the "grandfathering" provision, some recommended finding ways in which they could be recognized under the NNI Policy, for their contributions to the Nunavut economy. Some of these proposals have been discussed in Section 5.2.2 above.

5.9 NNI Policy Section 21 Revisions to or Repeal of This Policy

The Review Committee recommends no changes to Section 21.

5.10 Appendix A: Definitions

As a consequence of findings of the First Annual Review and of this Comprehensive Review, Appendix A "Definitions" in the NNI Policy needs to be amended to ensure that it is consistent with the Policy and that it is clear and unambiguous. The following definitions should be modified to read as follows:

Adjustments for Local Business Status:

Reference section 11.1(c) (iii) (of the NNI Policy) the adjustment for local status, and Appendix A page 3 of 7 (of the definition section of the NNI Policy) the definition for Local Business. The 4% Bid Adjustment for companies with local status can be applied to a company that is a Nunavut Business or an Inuit Firm so long as that company is registered with either the GN or NTI and is local to the community where the work is to be carried out.

Bid Adjustment - the amount by which the face value of a Bid is reduced in accordance with Section 6(2) of this Policy. The Bid Adjustment is used for Bid evaluation purposes only. The Bid price minus the Bid Adjustment will be referred to as the adjusted price.

Bid Adjustment Cap

Reference s. 11.4 (of the NNI Policy) The bid adjustment values for goods contracts will be applied to the first $100,000.00 only. This cap applies to purchase of goods contracts only and does not apply to construction related materials supply sub-contracts.

Emergency Contracts
Contracts for the supply of emergency services as those contracts sole sourced in accordance with s.10(a) of the Government of Nunavut Contact Regulations, made pursuant to the Financial Administration Act.

Section 10 of the GN Contract Regulations sets out when a contract authority may contract without promoting the submission of competitive bids. 10(a) applies if the contract authority believes, on reasonable grounds that *" the goods, services or construction are urgently required and delay would be injurious to the public interest."*

Local Business - a Nunavut Business which has been resident in the Subject Community for the four months prior to application and in addition complies with the following criteria:

i. maintains an approved place of business by leasing or owning office, commercial or industrial space or where applicable, residential space, in the community on a year-round basis for the primary purpose of operating the subject business, and
ii. maintains a Local Resident Manager, and
iii. undertakes in the Subject Community the majority of its management and administrative functions related to its operations in the Subject Community, and
iv. has applied for and received designation as a Local Business at least two weeks prior to a Tender or RFP closing.

Nunavut Business - A business which complies with the legal requirements to carry on business in Nunavut, and meets the following criteria:

i. is a limited company with at least 51 percent of the company's voting shares beneficially owned by Nunavut Residents, or
ii. is a co-operative with at least 51 percent of the Residents' voting shares beneficially owned by Nunavut, or
iii. is a sole proprietorship, the proprietor of which is a Nunavut Resident, or
iv. is a partnership, the majority interest in which is owned by Nunavut Residents and in which the majority benefits, under the partnership agreement, accrue to Nunavut Residents,

and complies with the following:

i. maintains a registered office in Nunavut by leasing or owning office, commercial or industrial space or in the case of service oriented businesses, residential space, in Nunavut on an annual basis for the primary purpose of operating the subject business, and
ii. maintains a Resident Manager, and
iii. undertakes the majority of its management and administrative functions related to its Nunavut operations in Nunavut, and
iv. has received designation as a Nunavut Business at least two weeks prior to a Tender or RFP closing.

Nunavut Supplier - a Nunavut Business that is a supplier of goods to which the general public has access and from whom the general public can purchase directly from a Representative Inventory of items offered for sale and has received designation as a Nunavut Supplier at least two weeks prior to a Tender or RFP closing.

6.0 EXPANDING THE NNI POLICY

The original NNI Policy does not address a number of policy, procedure or systemic questions relevant to both effective GN contracting and the application of Article 24, or both. The following sections describe additional measures proposed, and are based on public consultations, written submissions, and the discussions of the Review Committee.

6.1 Recommendations from 2001 NNI Annual Review

The 2001 NNI Review included fourteen recommendations. Some of these recommendations were acted on in part while others were not addressed at all. One of the difficulties in systematically implementing recommendations from the Review Committee was the absence of a mechanism for so doing. **[See Recommendation # 14 Monitoring and Training Unit.]**

For a complete listing of the recommendations and actions taken to date, see Appendix 5.

Important recommendations that were not acted on subsequent to the 2001 Review include:

Recommendation 2 Evaluation Criteria for Request for Proposals
That the GN develops clear criteria for determining Inuit Content in Evaluation/Rating Criteria for Requests for Proposals, including management, labour and training, and that these criteria will, where practicable, be standardized across all departments.

Recommendation 4 Review of Procedures
That the GN and NTI review the GN Contract Procedures Manual for conformity to the NNI Policy for the 2002/2003 contracting season.

Recommendation 7 Study to Measure Inuit Participation
That the GN and NTI jointly conduct a study to determine how to measure components of Inuit Participation, which might include but not be limited to Inuit Labour, Inuit Management, Inuit Ownership and Training.

Recommendation 8 Study to Examine Economic Leakage
That the GN and NTI commission a study to examine the economic effects of large outside firms performing work in small communities.

Recommendation 10 Plan Holders/Bidders Lists
That the GN provide relevant contracting information, including Plan Holders/Bidders Lists and Award Lists to Nunavut communities for public posting.

Recommendation 11 **Availability of Tender Documents**
That, where practicable, the GN provide tender documents in the community where work is to be done, as well as at the Regional Office.

Recommendation 12 **Delivery of Bidders Proposals**
That bidders, where practicable, be allowed to deliver bid or proposal documents to GN offices in the community where the work is to be done, as well as to Regional offices.

Recommendation 13 **Translation**
That the GN undertake to translate bid or proposal template documents into Inuktitut and Inuinnaqtun.

Recommendations that have been partially implemented include:

Recommendation 3 **Training in Use of Evaluation Criteria**
Recommendation 5 **Consistency with NCLA**
Recommendation 6 **Training for GN Employees and Businesses**

Recommendation #19 **Recommendations 2001 Review**

That all recommendations made during the 2001 Annual review be implemented as soon as possible given the delay already incurred.

With regards to Recommendation 4 of the 2001 annual Review, this task should be accomplished before January 31, 2004 and assigned to the new Contracting Review Committee (Recommendation 18) to undertake.

It is further recommended that the scope of Recommendations 7 and 8 of the 2001 Annual Review be expanded and that a full economic impact study be done of the NNI Policy including attention to Sole Source Contracting.

Type of Change: **Contract Procedures**
Timeline: **Immediate**

6.2 Employment & Training

6.2.1 Background

The Review Committee has placed a great deal of emphasis on the importance of training and employment incentives to the success of the NNI Policy. The Committee has prepared a number of recommendations to address the specific needs for training and capacity building.

Sections 11 and 12 of the NNI Policy do not describe how contracting authorities establish Inuit content levels either in tenders or in Requests for Proposals. There is nothing in the Contract Procedures to indicate how employment levels or training guidelines are set. The application of Inuit employment and training guidelines also appear to vary considerably from one region to another, between departments, and even within departments. (Recommendations #11 and #12 in Section 5.3.1 above address these issues.)

The Contract Procedures regarding RFPs do explain how points are to be awarded for Inuit content in an evaluation grid, as

> 7.12.3 Inuit content criteria ratings will be calculated at 10% for Inuit employment and 5% for Inuit ownership respectively.

Contract data reports do not have any of this information separated out for RFPs and so it is not possible to tell from these reports how Inuit ownership and employment levels are specifically determined. Information provided to the Committee during meetings would indicate that the application of RFP evaluation criteria varies from one department to another and even within the same department.

Article 24.3.7 (a) and (b) of the NLCA both apply to training:

> *(a) increased access by Inuit to on-the-job training, apprenticeship, skill development, upgrading, and other job related programs; and*
>
> *(b) greater opportunities for Inuit to receive training and experience to successfully create, operate and manage Northern businesses.*

The only place the NNI Policy that addresses the question of training is in regards to possible bonuses in Section 12.6 and 12.7. These sections are tied to the *Contract Procedures Manual, Section 10.6 - Training*

> *10.6.1 A bonus can be earned where training is provided to Inuit in the following areas:*
>
> *i. entry level positions - these are positions where an individual is provided with a job doing basic tasks, and*
>
> *ii. apprenticeship positions - these are positions where an individual is provided with on-the-job training and classroom instruction to ultimately achieve professional accreditation. The individual is provided with on-going evaluation of their progress.*

10.6.2 Bonuses can be earned for the provision of training to non-Local and Local Inuit.

The NNI Policy and associated procedures provide very little detail about how business training or on the job training is to be achieved or evaluated, or on how bonuses are applied. Both the Policy and the Contract Procedures require considerable revision if they are to provide support in an effort to meet the training needs necessary to attain the objectives set out in the NNI Policy.

6.2.2 New Employment and Training Initiatives

While the committee heard that programs are already in place that provided incentives to employers to hire and train apprentices, one of which is a $7.50 an hour subsidy, it is evident that uptake is limited and that more needs to be done to encourage the use of Inuit apprentices.

Incentives for hiring apprentices have not led to employment levels hoped for by the government. The Review Committee believes that having wage-subsidized apprentices working on larger work sites would not be a burden for contractors. Although the Committee recognizes that apprentices will not be as efficient as certified trades people, wage subsidies should offset productivity shortfalls. Requiring contractors to hire apprentices should ensure that sufficient certified trades people are available to meet future needs. The Review Committee does not anticipate that the GN will bear the full costs of this recommendation directly as costs will be incorporated into bids submitted by contractors.

The Review Committee has also concluded that training must be more closely associated with long range planning, and that trades training in communities two to three years prior to a major capital project should be made a requirement. Such training should be provided, after careful consultation with the contracting authority to identify the skills that will be required to complete the project going into the community. Adjacent communities could be involved should the demand be greater than the resources available.

A detailed database of graduates of all training programs as well as experienced workers, along with the skill set each has, must be kept and this list provided to bidders as part of the bid package. Such a list would provide the communities themselves, the government, and contractors with a current inventory of the resources available. It would also provide the government with the information necessary to determine what training would be necessary in communities when significant projects were being planned.

With a lead time of between three and five years for most large projects, the government can also make certain that communities get the most benefits possible as a result of these projects by ensuring that specialized training is available when needed. A procedure for linking project managers with the Nunavut Arctic College should be developed and included in the training strategy.

Training and capacity building cannot be an afterthought. They must be considered from the outset of a project and the funds obtained as part of the project. Too often this important component is not considered. When projects then move forward and training funds are not available, important training and employment opportunities are lost.

It will be very important for both the Department of Education and the Nunavut Arctic College to take the lead in many of the recommendations that follow. Also, appropriate resources need to be provided to them for the planning, development and delivery of the programs and services. These recommendations, while having significant financial implications for the Government of Nunavut, are made in the context of the government's responsibility under Article 24.3.1 of the NLCA and should be considered in that context.

Some programs are now in place, and others are being developed, that address some aspects of the recommendations made in this report. These programs should be incorporated into the planning that needs to be done on a strategy that crosses departmental and Government Agency lines, in order to address the issues in a consistent and effective manner. GN Education is developing an Adult Learning Strategy, and this will surely help in addressing the issues raised here as they take these recommendations into account. However, in addition to the Adult Learning Strategy, a comprehensive Trades Strategy will need to be developed as well.

There is a need for flexibility in the design and delivery of programs that recognize the realities of Nunavut. The Review Committee's recommendations raise a number of implementation questions which will need to be addressed by the implementation work plan developed to carry out the recommendations in this report. The committee recognizes that challenges are involved and that changes to existing practices will be necessary.

The following recommendations are intended to apply to Nunavummiut who are eligible for Financial Assistance for Nunavut Students (FANS) or equivalent funding through Regional Inuit Associations.

Recommendation # 20 **Apprenticeship Wages Rebate**

That a rebate of Inuit apprentice wages be provided to contractors as an incentive to hire and train Inuit. Since this is an incentive to hire apprentices, and would provide an advantage to companies receiving the salary rebates, it is suggested that the amount be initially set at 15% of all apprentices' wages.

Type of Change: **Policy Change**
Timeline: **Middle Term**

Recommendation # 21 **Inuit Training Plans within Contracts**

That a requirement be imposed that every contract with a labour component of over $300,000 includes a training plan for Inuit, which should include apprenticeships where possible. This requirement would be an integral part of the contract

Type of Change: **Policy Change**
Timeline: **Middle Term**

Recommendation # 22 **Training as part of Maintenance Contracts**

That all maintenance contracts with a value of over $250,000 should contain a training/apprenticeship requirement, given that the Government of Nunavut contracts all of its maintenance to the private sector.

Type of Change: **Policy Change**
Timeline: **Middle Term**

Recommendation # 23 **Training in the Communities**

That two or three years before any large capital project commences in a given Nunavut community, the Government of Nunavut put in place training programs to ensure that training is done in the community to maximize use of local labour.

Type of Change: **Systemic**
Timeline: **Middle Term**

Recommendation # 24 **List of Available Human Resources in Each Community**

That a list identifying workers and their specific skills be maintained for each community, and updated semi-annually. The list would be provided to all bidders on projects in the target community and surrounding communities as a matter of practice.

Type of Change: **Procedures**
Timeline: **Middle Term**

The Review Committee proposes two long term recommendations that will require the Government of Nunavut to review their priorities in the area of trades training and programs and to ensure that the needed capital expenditures needed to implement these recommendations are obtained through the budgeting process.

First, the GN should reconsider the emphasis it gives to trades in high schools and through the Nunavut Arctic College.

Second, the GN and the Apprenticeship Board, in consultation with the NWT Construction Association, should review the entire approach to apprenticeships in Nunavut. GN Education should take the lead on this initiative.

There will be cost implications for the government to implement both of these recommendations.

Recommendation # 25 **Trades in the Schools**

That the government of Nunavut reconsider the emphasis it gives to trades training in its high schools and brings in training for all high school students to encourage more interest in the trades as a career. This would also mean that Nunavut Arctic College would need to adapt its programming to provide options for students wishing to pursue such studies.

Type of Change: **Systemic**
Timeline: **Long Term**

Recommendation # 26 **Apprenticeship Program Review**

That the Government of Nunavut reviews its whole apprenticeship program with a view of adapting it to the needs of Nunavut. This would mean looking at alternate delivery methods, possible alternate arrangements with a more flexible jurisdiction than the one currently being used that is willing to explore options to meet the unique needs of Nunavut or the possibility of local certification.

Type of Change: **Systemic**
Timeline: **Long Term**

In the present framework for Social Assistance, anyone who gets a job, even as an apprentice, has his or her Social Assistance affected, including rent subsidy when rents are readjusted based on their annual income. While this is a very simple description of a complicated issue, it encapsulates a key theme of the Committee: that a graduated approach should be taken to adjusting benefits to workers who are receiving training or

on apprenticeships. Then training opportunities would serve as an incentive to finding and keeping employment.

While there are a number of programs currently available for SA recipients, these programs are limited in scope and applicability. There needs to be an assessment done of the current approach in the context of encouraging people to seek training while providing them with long-term support.

There may be short-term costs to implementing a more generous approach to supporting people being trained either as apprentices or in other training programs, but the long-term cost to the territory will certainly be far less both financially and socially.

The committee recognizes that such a fundamental change in approach will be challenging, but firmly believes that if a trained and capable workforce is to be developed in Nunavut this is an essential element.

Recommendation # 27 **Supporting People Being Trained**

That the application of Social Assistance and Housing Subsidies/ Adjustments be studied and changes made to encourage people to go into the workforce rather than discourage them.

It is further recommended that special attention be paid for those undertaking training and/or apprenticeships to ensure that these people are supported during their training.

Type of Change: **Systemic**
Timeline: **Long Term**

7.0 ADDITIONAL AREAS FOR CONSIDERATION

7.1 Sole Source Contracts;

Over the past three years sole source contracts have averaged 10-14% of all GN contracting, During the most recent fiscal year $8,664,148 resulted from Sole Source awards (14%) of a total contract value of $64,399,614 for Large Contracts (excluding Goods). Of these 45% went to "Other" businesses (those not registered as Inuit or Nunavut firms).

Sole source contracts represent a sizeable portion of GN contracting that is occurring outside the guidelines of the NNI Policy. See Recommendation #16"Contracts with Outside Firms" in Section 5.4.1 above. The practice of Sole Source Contracts should be studied as part of the economic study recommended in Recommendation # 19.

7.2 Cabinet Responsibilities and Prerogatives

> Article 3.1 of the NNI Policy reads:
> *"In exercising its wider responsibilities and prerogatives, the Cabinet may, on an exceptional basis, depart from the application of provisions of the Policy."*

Since the NNI Policy was instituted in 2001, Cabinet has set aside one contract from the application of the NNI Policy. This was the fuel supply contract for the Baffin and Kivalliq regions.

As well, Section 20 of the NNI Policy provided for a two-year transition process during which firms formerly recognized under the Government of the NWT's Business Incentives Policy, would be "grandfathered" under the NNI Policy. Cabinet extended this transition period for a further year without consulting with NTI on this policy change. The resulting dispute was resolved by the "Settlement Agreement" between the parties of August 4, 2002 (Section 5.5).

7.3 Overseeing the Implementation of Review Recommendations

Recommendation # 28 Recommendation Implementation Work Plan

It is recommended that Cabinet direct that a detailed work plan be developed for the implementation of these recommendations within three months of it's accepting the report.

The responsibility for developing and implementing the various components of the work plan based on the recommendations should be shared between the Deputy Minister of Executive and Intergovernmental Affairs and the Deputy Minister of the Department given the lead.

Type of Change: **Policy Change**
Timeline: **Immediately**

Since the recommendations in this report are so broad in scope, it will be very important that a detailed work/implementation plan with relevant timelines and benchmarks be developed and closely monitored.

The recommendations made by the Contracting Review Committee during the first Annual Review and approved by Cabinet were not implemented to any significant extent. Much of that can be attributed to the absence of a work plan. This should be avoided this time with clear direction given as a result of the above recommendation.

In reviewing the NNI Policy and developing its recommendations, the Review Committee has kept in mind the *Nunavut Economic Development Strategy* developed by more than twenty Nunavut-based organizations and approved by the GN Cabinet and the NTI Board of Directors. The objectives of the NNI Policy are generally consistent with this *Strategy*. As well, many of the "systemic" recommendations of the Review Committee, reflecting input heard during its visits to communities and from presenters, echo the recommendations of the *Nunavut Economic Development Strategy*. The Review Committee considers it important that those developing a work plan to implement the *Nunavut Economic Development Strategy* consider the Review Committee's recommendations on matters such as trades training and apprenticeship.

7.4 Consistency / Integration of Policy Initiatives

The Review Committee was provided with examples of situations where the NNI Policy was not applied consistently across government. The Review Committee came to the conclusion that the lack of consistency was the root cause of much of the limited success of the policy. In presentations from members of the public to discussions with GN staff, it became clear that the policy was being applied differently across government and in some cases not being applied at all.

Through the following recommendations, the Review Committee proposes changes in government practices that would promote better long-term planning and promote a more consistent application of the NNI Policy. The NNI Policy needs to become an integral part of government planning.

It is important that government directs that all contracting authorities, including Crown Agencies, standardize their practices and procedures. One set of Contract Procedures should apply to all and be applied uniformly.

There currently exists a committee that oversees Capital Projects and this committee would need to ensure that the requirements of Recommendation # 30 are followed. The staging of projects within a community is crucial if maximum use of local labour is to be attained and if training is to be conducted to allow this. The problem currently is that the 5-year plan uses declining targets with the 5th year targets comprising only 60% of current year targets. As a result not all planned projects are included within established targets.

Recommendation # 29 **Contracting Authority**

That the whole issue of contracting authorities within government be reviewed and that all options examined. Whatever the final model retained, it will be imperative that training be done on an ongoing basis to ensure consistency of application of the NNI Policy and Contract Procedures across the territory.

Type of Change: **Policy Change**
Timeline: **Middle Term**

Recommendation # 30 **Better Capital Planning Within Government**

Ensure better planning and communications within the government with respect to contracting so that individual departments are aware of all significant activities. All projects in excess of $1M should be identified and included in the Government's 5-year capital Plan, and where necessary, the departmental targets should be adjusted accordingly.

Type of Change: **Policy Change**
Timeline: **Middle Term**

Recommendation # 31 **Better Capital Planning Across Governments**

Improve communication among the different levels of government and major utilities on capital projects, with the goal of reducing duplication and increasing efficiency and making maximum use of local workers.

Type of Change: **Policy Change - Section**
Timeline: **Immediately**

7.5 Territorial Parks

Recommendation # 32 **IIBA for Territorial Parks and the NNI Policy**

That the sections of Contracting Policy for Territorial Parks that relate to the NNI Policy be referenced in the NNI Policy and the relevant sections appended.

Given that Clause 5.3.1 (b) and (c) of the IIBA for Territorial Parks indicate that changes to the NNI Policy will not apply unless specifically approved in writing by all parties, it will be important to embark on negotiations to obtain this written consensus and agreement on any of the changes made to the current NNI Policy

Type of Change: **Policy Change**
Timeline: **Middle Term**

The timing in implementing this recommendation will be dictated by the time needed by the parties that are signatory to the IIBA for Territorial Parks to reach agreement in writing on the adoption of each change made, as a result of the recommendations made in this report, to the current NNI Policy as foreseen in Section 5.3 of the IIBA.

8.0 LIST OF RECOMMENDATIONS

Recommendation # 1 (s 5.1.1) **Policy Objectives**

That the following paragraph be inserted at the end of section 7.1:

"These objectives are not listed in order of importance and should not be interpreted as such."

Recommendation # 2 (s 5.2.1) **Bid Adjustment Percentages**

That the bid adjustments be modified to represent levels that provide a greater advantage for Inuit firms. It is recommended that the Nunavut firms adjustment be changed to 10% and the Inuit firm adjustment be changed to 6% and that the Local firm adjustment be changed to 4%.

Recommendation # 3 (s 5.2.3) **NNI Nunavut Firm Registry and Inuit Firms Registry**

That, prior to the next Annual Review,

The NTI:

- Review all firms registered in its Inuit Firms Registry to ensure compliance with Article 24 of the NLCA.
- Publicize the criteria used to determine entitlement to Inuit firm registration pursuant to Article 24 of the NLCA.
- Maintain an up to date Inuit Firms Registry on the NTI website with a link to the Nunavut Firms Registry on the Government of Nunavut web site.

Government of Nunavut

- Review all firms registered as Nunavut firms to ensure their entitlement to registration pursuant to the NNI Policy.
- Publicize the criteria used to determine eligibility for registration as a Nunavut firm pursuant to the NNI Policy.
- Maintain an up to date Nunavut Firm Registry on the Government of Nunavut Public web site with a link to the Inuit Firms Registry on the NTI web site.

It is further recommended that:

- The Government of Nunavut and NTI notify the other party in writing of any information that it has, which indicates that a Firm, registered on the other party's list, may not be eligible to be so registered.
- In any such case, the information will be provided to the said firm, identifying either NTI or the GN as the source of the information, in order to provide the firm with the opportunity to respond to the information in good time prior to any decision that may be made regarding its removal from the specified list.

Recommendation # 4 (s 5.2.6) **Commercial Leases**

That two new clauses be added to all Government of Nunavut Commercial Leases (specific language to be developed by Department of Justice)

1) Where a lease is won as a result of an NNI Bid Adjustment, the agreed rent will remain in force only as long as the lease is owned and managed by a company that is on the Nunavut Firm Registry or the Inuit Firm Registry. Should the lease be transferred to a firm that does not qualify for either list, the value of the lease will be adjusted to the lowest bid amount prior to the NNI bid adjustment.

2) Any firm that wins a lease as a result of an NNI bid adjustment must report annually confirming their continued eligibility and confirming that there have been no substantive changes in ownership. Failure to do so would result in the lease being adjusted as above.

Recommendation # 5 (s 5.2.7) **Structural changes to NNI Policy Sections 11, 12, &13**

That the structure of Section 11 of the NNI Policy be changed to show more clearly the appropriate adjustments, rebates, penalties and bonuses for four different types of contracts: Construction, goods, services, and leases.

Recommendation # 6 (s 5.2.8) **Sub-Contractors**

Require general contractors on construction contracts to invite Nunavut and Inuit or local companies to bid on subcontracts where they are not already using Nunavut and Inuit or local companies as subcontractors.

Recommendation # 7 (s 5.2.8) **Invitational Tendering**

Where sufficient competition is present, 3 or more capable and interested bidders, issue invitational tenders/proposals only to Nunavut businesses. Any invitational tender must include Nunavut vendors if they exist. Review and revise if necessary the mechanism for ensuring Nunavut businesses have equitable access to government contracts (sole source and invitational)

Recommendation # 8 (s 5.2.9) **Unbundling of Contracts**

That every effort shall be made to unbundle contracts where practicable and consistent with sound procurement management.

That consideration should also be given to the use of a Bid Depository as a method of encouraging the use of local sub-contractors and as a method of unbundling projects. This would be used for projects where the dollar value of the sub-contract is over $200,000.

Recommendation # 9 (s 5.2.10) **Nunavut Manufacturing**

That the GN Develop a list of products made in Nunavut and set either a cost adjustment when buying such products on government contracts or provide a rebate when such goods are purchased. The amounts should be set following an economic impact study on this issue.

Recommendation # 10 (s 5.3.1) **Increased Bonuses and Penalties**

That bonuses be increased to 1% of total payroll for every percentage point achieved above stipulated threshold levels for Inuit employment; and that penalties be set at 2% of total payroll for every percentage point under the stipulated minimum levels for Inuit employment.

Recommendation # 11 (s 5.3.1) **Removal of Bid Adjustment on Inuit Employment**

That bonuses and penalties be paid based on the minimum Inuit labour component set by the contracting authority, and that no bid adjustment be given in the tendering phase for bidders estimates of Inuit content over and above the minimum required.

Recommendation # 12 (s 5.3.1) **Establishment of Criteria for Minimums**

That the Government of Nunavut establishes criteria for setting minimum Inuit employment percentages and ensures that these criteria are put in the Contract Procedures Manual.

Recommendation # 13 (s 5.3.1) **Publication of Inuit Employment Levels**

That the proposed minimum Inuit labour content be included for all construction projects on the list published each year in anticipation of the upcoming construction season. It should be made clear that feedback from interested persons is encouraged on these proposed levels prior to the issuing of the tenders.

Recommendation # 14 (s 5.4.1) **Monitoring and Training Unit**

That a unit be created in the appropriate department and provided with the resources, both financial and human, necessary to do the follow-up and training on the NNI Policy and to ensure consistency of application and consistency of reporting the required data in a timely manner.

Recommendation # 15 (s 5.4.1) **Applicability of NNI Policy**

That the government enforce Section 5.1 of the NNI Policy that stipulates that all municipalities, Crown Corporations, and Government Agencies are subject to the NNI Policy.

Further, that meetings be held with every municipality, Crown Corporation and Government Agency to make sure that they understand their responsibilities under this policy, provide the necessary training with regards to the application of the policy and the reporting requirements of the policy.

Recommendation # 16 (s 5.4.1) **Contracts with Outside Firms**

Publish at least annually in Nunavut newspapers a list of the items/services purchased from businesses outside Nunavut, including purchase price and relevant contract details. Immediately publish a list of all contracts issued to firms outside of Nunavut on the government public web site

Recommendation # 17 (s 5.5) **NNI Review Committee**

It is recommended that the mandate of the Contracting Review Committee be changed to give it a 5-year mandate with the appropriate Terms of Reference similar to those for this Comprehensive Review, and that the Review Committee meet at least quarterly to discuss issues relating to the NNI Policy such as: its implementation, how it is functioning and the status of the implementation of its approved recommendations.

The GN and NTI should each appoint Co-Chairs each party should have up to four members to provide for regional input. The GN Co-Chair should be appointed from a Central Agency, ideally Executive and Intergovernmental Affairs, with the Chairs having the same decisional powers they have been given for this Comprehensive Review

Recommendation # 18 (s 5.6) **Appeals and Arbitration**

That Section 18 of the NNI Policy be replaced with the new Section 18 found in Appendix 6, that consequential amendments to the Government Contract Procedures be made, that the Appeals Board be established as soon as possible and that the inclusion of the Terms of Reference of the Appeals Board in the Government Contract Procedures be considered by the Review Committee during the 2004 Annual Review.

Recommendation # 19 (s 6.1) **Recommendations 2001 Review**

That all recommendations made during the 2001 Annual review be implemented as soon as possible given the delay already incurred in doing so.

With regards to Recommendation 4 of the 2001 annual Review, this task should be accomplished before January 31, 2004 and assigned to the new Contracting Review Committee (Recommendation 18) to undertake.

It is further recommended that the scope of Recommendations 7 and 8 of the 2001 Annual Review be expanded and that a full economic impact study be done of the NNI Policy including attention to Sole Source Contracting.

Recommendation # 20 (s 6.2.2) **Apprenticeship Wages Rebate**

That a rebate of Inuit apprentice wages be provided to contractors as an incentive to hire and train Inuit. Since this is an incentive to hire apprentices, and would provide an advantage to companies receiving the salary rebates, it is suggested that the amount be initially set at 15% of all apprentices' wages.

Recommendation # 21 (s 6.2.2) **Inuit Training Plans within Contracts**

That a requirement be imposed that every contract with a labour component of over $300,000 includes a training plan for Inuit, which should include apprenticeships where possible. This requirement would be an integral part of the contract

Recommendation # 22 (s 6.2.2) **Training as part of Maintenance Contracts**

That all maintenance contracts with a value of over $250,000 should contain a training/apprenticeship requirement, given that the Government of Nunavut contracts all of its maintenance to the private sector.

Recommendation # 23 (s 6.2.2) **Training in the Communities**

That two or three years before any large capital project commences in a given Nunavut community, the Government of Nunavut put in place training programs to ensure that training is done in the community to maximize use of local labour.

Recommendation # 24 (s 6.2.2) **List of Available Human Resources in Each Community**

That a list identifying workers and their specific skills be maintained for each community, and updated semi-annually. This list would be provided to all bidders on projects in the target community and surrounding communities as a matter of practice.

Recommendation # 25 (s 6.2.2) **Trades in the Schools**

That the government of Nunavut reconsider the emphasis it gives to trades training in its high schools and brings in training for all high school students to encourage more interest in the trades as a career. This would also mean that the Arctic College would need to adapt its programming to provide options for students wishing to pursue such studies.

Recommendation # 26 (s 6.2.2) **Apprenticeship Program Review**

That the Government of Nunavut reviews its whole apprenticeship program with a view of adapting it to the needs of Nunavut. This would mean looking at alternate delivery methods, possible alternate arrangements with a more flexible jurisdiction than the one currently being used that is willing to explore options to meet the unique needs of Nunavut or the possibility of local certification.

Recommendation # 27 (s 6.2.2) **Supporting People Being Trained**

That the application of Social Assistance and Housing Subsidies/ Adjustments be studied and changes made to encourage people to go into the workforce rather than discourage them.

It is further recommended that special attention be paid for those undertaking training and/or apprenticeships to ensure that these people are supported during their training.

Recommendation # 28 (s 7.3) **Recommendation Implementation Work Plan**

It is recommended that Cabinet direct that a detailed work plan be developed for the implementation of these recommendations within three months of its accepting the report.

The responsibility for developing and implementing the various components of the work plan based on the recommendations should be shared between the Deputy Minister of Executive and Intergovernmental Affairs and the Deputy Minister of the Department given the lead.

Recommendation # 29 (s 7.4) **Contracting Authority**

That the whole issue of contracting authorities within government be reviewed and that all options examined. Whatever the final model retained, it will be imperative that training be done on an ongoing basis to ensure consistency of application of the NNI Policy and Contract Procedures across the territory.

Recommendation # 30 (s 7.4) **Better Capital Planning Within Government**

Ensure better planning and communications within the government with respect to contracting so that individual departments are aware of all significant activities. All projects in excess of $1M should be identified and included in the Government's 5-year capital Plan, and where necessary, the departmental targets should be adjusted accordingly.

Recommendation # 31 (s 7.4) **Better Capital Planning Across Governments**

Improve communication among the different levels of government and major utilities on capital projects, with the goal of reducing duplication and increasing efficiency and making maximum use of local workers.

Recommendation # 32 (s 7.5) **IIBA for Territorial Parks and the NNI Policy**

That the sections of Contracting Policy for Territorial Parks that relate to the NNI Policy be referenced in the NNI Policy and the relevant sections appended.

Given that Clause 5.3.1 (b) and (c) of the IIBA for Territorial Parks indicate that changes to the NNI Policy will not apply unless specifically approved in writing by all parties, it will be important to embark on negotiations to obtain this written consensus and agreement on any of the changes made to the current NNI Policy

9.0 CONCLUSION

In arriving at its recommendations, the Review Committee has considered information presented at public hearings and through written submissions, listened to contracting authorities from a number of departments in all regions, and has relied on the experience of Committee members themselves. The Committee has looked at those aspects of the Policy that are working well and has attempted to identify weaknesses, inconsistencies and failings of the original NNI Policy. It has also documented a number of areas that the original NNI Policy did not address.

The Committee agrees that the GN must continue with a contracting policy that provides an advantage to Nunavut, local, and Inuit firms, in order to build the Nunavut economy and increase Inuit participation in the economy.

The NNI Policy is one of the GN's main tools for economic development, attempting to leverage change to the structure of the Nunavut economy through government contracting. So far, the main focus of the NNI Policy has been to affect development objectives through business ownership, using the bid adjustment system. By increasing the focus on employment and training in its recommendations, the Review Committee has underlined the need for a wider range of economic development initiatives to take place through the NNI Policy.

Although the need for a more comprehensive approach to economic development appears to have been accepted by all GN Departments, the NNI Policy is not well integrated into the over-all economic development plans of the GN.

Along with the requirement for better communications between and within GN departments, an improved NNI Policy will also require increased participation from Government Agencies, Crown Corporations, and Municipalities.

All GN departments, led by PW&S, will be required to make efforts to apply the NNI Policy consistently within their departments as well as between departments. PW&S should also revise the Contract Procedures to correspond closely to the NNI Policy. The Review Committee makes a number of recommendations aimed at streamlining communications, training contracting officers, and providing workshops for GN Boards and Agencies as well as Municipalities to learn the NNI Policy and its application.

Some of the initiatives outlined in the recommendations will require a high level of policy integration among several departments and agencies. Training initiatives in particular will require the cooperation of PW&S, CG&T and the GN Department of Education, as well as Nunavut Arctic College, the Nunavut Apprenticeship Board, the Nunavut Construction Association, and the economic development arms of the Regional Inuit Associations.

In a broader context, the *Nunavut Economic Development Strategy*, developed by NTI, the Nunavut and federal governments, together with more than twenty other Nunavut organizations, shows the importance of different interests working together for the

development of Nunavut's economy. Particularly relevant to the NNI Policy, all the parties are committed to the enhancement of Inuit employment through government and other contracting procedures. Through the Nunavut Economic Forum (comprising the groups who prepared the *Strategy*), detailed strategies and action plans will be prepared on a collaborative basis. This includes a review of contracting and purchase practices.

The NNI Policy cannot satisfy everyone, but it must attempt to capture GN economic development objectives as well as meet the requirements of the NLCA. By introducing a higher bid adjustment for Inuit and local firms, the Committee recognizes that the existing 3% advantage to Inuit firms is not moving them quickly enough into the mainstream economy. At the same time, bonuses, penalties, and rebates make it possible for a non-Inuit firm that provides a high level of Inuit employment or training to compete with a registered Inuit firm that does not work as hard in these areas.

With the coming into effect of Section 20 of the NNI Policy, which eliminates the "grandfathered" firms from the list of NNI-eligible companies, the GN must attempt to recognize the contributions of these firms as well as the contributions of other non-Nunavut firms to the economy, without reintroducing a similar provision. The Committee believes that the contributions of these firms can be recognized through a better program of incentives that recognize the benefits these companies bring to Nunavut in the form of employment and training.

The Review Committee discussed the possibility of making a recommendation regarding the recognition of Inuit - Inuvialuit joint corporations under Article 40 of the NLCA as Nunavut firms under the NNI Policy. These firms are 100% Inuit owned but only 50% by the Inuit of Nunavut. The remaining 50% is owned by the Inuvialuit of the Western Arctic, and the firms are listed in the Inuvialuit Business List The Committee determined that such recognition involves in part an interpretation of the NLCA and possibly has implications beyond the scope of this review. As such, it should be dealt with by government and NTI representatives with the appropriate mandate. The committee unanimously agrees that it needs to be addressed and resolved in a timely manner.

The Policy has generated a certain amount of negative publicity over the past three years. Much of this has been generated by a misunderstanding of the policy's objectives. A public campaign to properly inform all those that have an interest in knowing about the NNI Policy should be undertaken.

Finally, it is important to note that some of the recommendations that appear in this report have financial implications for the Government of Nunavut. Some may have significant costs attached to their implementation and this will need to be taken into consideration in developing implementation strategies. However, the Committee believes that these recommendations will promote the development of a Nunavut-based economy and that the long-term financial and social costs of not implementing them will be much higher.

Appendix 1

Nunavummi Nangminiqaqtunik Ikajuuti

COMPREHENSIVE REVIEW COMMITTEE

TERMS OF REFERENCE

BACKGROUND

The Government of Nunavut's contracting preference policy, the *Nunavummi Nangminiqaqtunik Ikajuuti* (NNI Policy), came into effect April 1, 2000. The NNI policy was negotiated between GN and NTI to replace the GNWT Business Incentives Policy and the GNWT Contract Procedures for the Nunavut Settlement Area with a policy designed to meet the objectives of Article 24 of the *Nunavut Land Claims Agreement.*

The use of incentives and preferences for Inuit and Nunavut businesses is intended to promote the growth of the economic base of the territory and ensure Inuit participation in it. This includes providing economic and training opportunities for Inuit and other Nunavut residents.

The first, and only Annual Review of the policy, was conducted in the fall of 2001 and the report was completed in the spring of 2002.

This review will be conducted to meet the requirements of Clause 17.4 of the NNI Policy and will constitute the Comprehensive Review mandated.

Under Clauses 16 and 17 of the NNI Policy, a Contracting Policy Review Committee (Review Committee) consisting of representatives appointed by the Government of Nunavut and Nunavut Tunngavik Incorporated shall be established to review the implementation of the Policy on a periodic basis to ensure that progress towards the objectives of the Policy is being made.

Under Clause 21 of the NNI Policy, Cabinet may make changes to this policy consistent with the obligations of the Government of Nunavut in Article 24 of the Nunavut Land Claims Agreement that requires a collaborative process with Nunavut Tunngavik Inc. in the maintenance of preferential procurement policies, procedures and approaches.

SCOPE OF THE REVIEW

The Review Committee will conduct a comprehensive review of the NNI Policy including but not limited to:

- A review of GN contracting data, subject to or exempted from the NNI Policy, from the establishment of the Policy on April 1, 2000 to March 31, 2003;
- A review of the substance and application of the policy to determine the extent to

which the NNI Policy meets the objectives set out in Article 24 of the NLCA and of the objectives of the NLCA in general;

- A review of the substance and application of the policy to determine the extent to which the NNI Policy meets the objectives set out in sections 7, 8 and 9 of the policy;
- A review of the recommendations of the previous review and their implementation;
- A review of the monitoring and enforcement concerns that may have arisen or may arise out of the implementation of the NNI Policy;
- A review of the results of all submissions and input received through community consultations and written submissions from third parties.

The Review Committee will prepare a final report that shall include recommendations which, in the opinion of the Committee, will ensure that the Government of Nunavut is better able to take meaningful steps toward providing Inuit with the means of participating in economic opportunities in Nunavut by maximizing Inuit employment and business opportunities as well as incorporating proposed changes that will benefit Inuit and all Nunavummiut. The report shall specifically address how the Government of Nunavut can best carry out the terms of Article 24 of the NLCA through the appropriate application of preferential contracting policies, procedures and approaches. Without limiting the scope of possible recommendations, the Review Committee may recommend the following:

- Revisions to the NNI Policy
- Amendments to legislation or regulations.
- Changes in administrative or regulatory structures.
- Other alternative arrangements.

COMPOSITION OF THE REVIEW COMMITTEE:

- NTI and the GN shall each appoint up to a maximum of six members to the Review Committee; a minimum of three members from each organization shall constitute a quorum.
- Each party shall appoint a senior representative.
- The Parties shall agree on the appointment of a chair.
- The Chair of the Committee or either of the GN or NTI teams may invite people with particular knowledge or expertise to attend meetings of the Review Committee for the purposes of providing specific support and advice. NTI and GN will notify the Chair, at least three days in advance, of any meeting where such resource people will attend. Each team will be limited to three invited resource people per meeting.

- Decisions of the Review Committee will be by agreement of the senior representatives, all communications regarding these decisions, will be made by the Chair on the recommendation of the senior representatives.
- The final report must be agreed to by the senior representative for each Party and will be submitted by the Chair of the Review Committee to the Deputy Minister of Intergovernmental Affairs and the Chief Executive Officer of Nunavut Tunngavik Inc.

CONSULTATION

- The Review Committee shall invite public input and consult with interested parties.
- The Review Committee shall agree to a process for regional consultations according to a schedule mutually acceptable to both parties.

REPORTING RELATIONSHIPS

- The responsible official of the Government of Nunavut for the purposes of the Review is the Deputy Minister of Intergovernmental Affairs.
- The responsible official of NTI and other Inuit organizations for the purposes of the review is the Chief Executive Officer of NTI.

TIME FRAME FOR THE COMPREHENSIVE REVIEW

- The committee conducting the Comprehensive Review shall meet and complete its deliberations no later than November 1, 2003.
- All relevant information or data gathered in advance by either GN or NTI shall be provided to all Committee members in a timely manner before meetings.
- The Committee shall consider its deliberations and recommendations and prepare a Final Report to be submitted to Cabinet and to the NTI Executive Committee for approval, and both Parties will make best efforts to make the report available to the public no later than November 30, 2003, following the approvals.

COSTS

- GN will be responsible for the costs of the participation of its staff;
- NTI will be responsible for the costs of the participation of its staff;
- The costs of public consultations, including advertising will be the responsibility of the GN;
- GN will bear the costs of providing secretarial support to the Review Committee;
- The costs of advertising, production, translation and distribution of the draft report will be the responsibility of the GN.

CONFIDENTIALITY

The parties commit to disclose information to the Review Committee as fully as possible. It is recognized that some information provided by firms may be commercially sensitive, personal or provided by third parties in the expectation that it would not be shared with anyone outside the Government of Nunavut. Such information will be kept strictly confidential and shall not be disclosed or used by any person in any proceedings or in any manner outside the review process.

Signed on this _____ day of _____ 2003 at Iqaluit, Nunavut.

David Omilgoitok	John Lamb
Deputy Minister of Intergovernmental Affairs	Chief Executive Officer
Government of Nunavut	Nunavut Tunngavik Incorporated

These Terms of Reference include a Proposed Schedule of Activities set out in Annex A.

Annex A

Proposed Schedule of Activities:

August 2003

GN deliver to NTI Contract Data report for fiscal year 2002 - 2003	August 22

September 2003

GN and NTI sign Terms of Reference	September 3
Advertise consultation process and solicit submissions from public	September 5
Public consultations in three regional centres	
• Whale Cove, Rankin Inlet	September 22-23
• Cambridge Bay, Taloyaok	September 24-25
• Iqaluit	September 26
• Kimmirut (this cost will be covered by GN)	T.B.D.
All Parties review public submissions and Contract Data Report	September 29
Work on the preliminary draft of Final Report	September 30

October 2003

Meeting of Review Committee	October 1
Develop common preliminary draft of the Final Report	October 3
Optional consultation on preliminary draft using a Focus Group	October 14
Review comments on preliminary draft if Focus Group is used	October 17
Prepare Final Report for approval by GN Cabinet and NTI Executive	October 31

Appendix 2

ARTICLE 24 – Nunavut Land Claims Agreement

GOVERNMENT CONTRACTS

PART 1: DEFINITIONS

24.1.1 In this Article:

"Government" means the Government of Canada or the Territorial Government;

"government contract" means a contract, other than a contract for government employment as defined in Article 23, between the Government and a party other than Government or any other government for procurement of goods or services, and includes

(a) contracts for the supply of goods,

(b) construction contracts,

(c) contracts for the supply of services, and

(d) leases;

"Government of Canada" means all federal departments and departmental corporations listed in Schedules I and II, and parent Crown Corporations listed in Schedule III, Part I of the *Financial Administration Act* RSC 1985, Chapter F-11; "Inuit firm" means an entity which complies with the legal requirements to carry on business in the Nunavut Settlement Area, and which is:

(a) a limited company with at least 51% of the company's voting shares beneficially owned by Inuit,

(b) a cooperative controlled by Inuit, or

(c) an Inuk sole proprietorship or partnership;

"invite" means to call publicly for bids;

"representative level of employment" means a level of employment in the Nunavut Settlement Area that reflects the ratio of Inuit to the total population of the Nunavut Settlement Area;

"solicit" means to request bids from a limited number of businesses based on some form of prequalification;

"Territorial Government" means all territorial government departments and all public agencies defined by the *Financial Administration Act*, S.N.W.T. 1987 (1), c.16, Part IX, and Schedules A, B, and C, but excluding the Northwest Territories Power Corporation.

PART 2: OBJECTIVE

24.2.1 The Government of Canada and the Territorial Government shall provide reasonable support and assistance to Inuit firms in accordance with this Article to enable them to compete for government contracts.

PART 3: PROCUREMENT POLICIES

Government of Canada Policies

24.3.1 Consistent with this Article, the Government of Canada shall develop, implement or maintain procurement policies respecting Inuit firms for all Government of Canada contracts required in support of its activities in the Nunavut Settlement Area.

24.3.2 The Government of Canada shall develop or maintain its procurement policies in close consultation with the DIO, and shall implement the policies through legislative, regulatory or administrative measures.
24.3.3 The measures referred to in Section 24.3.2 shall be binding on the Government of Canada, and shall be given effect:
(a) in all cases, no later than one year following the date of the ratification of the Agreement; and
(b) with respect to survey contracts, prior to the award of survey contracts arising from Article 19.

Territorial Government Policies
24.3.4 Subject to Section 24.9.2, the Territorial Government shall maintain preferential procurement policies, procedures and approaches consistent with this Article for all Territorial Government contracts required in support of Territorial Government activities in the Nunavut Settlement Area. The Territorial Government will consult with the DIO when developing further modifications to its preferential policies, procedures and approaches in order that the provisions of this Article may be met.

Adaptability Over Time
24.3.5 Procurement policies and implementing measures shall be carried out in a manner that responds to the developing nature of the Nunavut Settlement Area economy and labour force. In particular, the policies shall take into account the increased ability, over time, of Inuit firms to compete for and to successfully complete government contracts.

Policy Objectives
24.3.6 Procurement policies and implementing measures shall reflect, to the extent possible, the following objectives:
(a) increased participation by Inuit firms in business opportunities in the Nunavut Settlement Area economy;
(b) improved capacity of Inuit firms to compete for government contracts; and
(c) employment of Inuit at a representative level in the Nunavut Settlement Area work force.

Consultation
24.3.7 To support the objectives set out in Section 24.3.6, the Government of Canada and the Territorial Government shall develop and maintain policies and programs in close consultation with the DIO which are designed to achieve the following objectives:
(a) increased access by Inuit to on-the-job training, apprenticeship, skill development, upgrading, and other job related programs; and
(b) greater opportunities for Inuit to receive training and experience to successfully create, operate and manage Northern businesses.

PART 4: BID INVITATION
24.4.1 In cooperation with the DIO, the Government of Canada and the Territorial Government shall assist Inuit firms to become familiar with their bidding and contracting procedures, and encourage Inuit firms to bid for government contracts in the Nunavut Settlement Area.
24.4.2 In inviting bids on government contracts in the Nunavut Settlement Area, the Government of Canada and the Territorial Government shall provide all reasonable opportunities to Inuit firms to submit competitive bids, and, in doing so, shall take, where

practicable and consistent with sound procurement management, the following measures:
(a) set the date, location, and terms and conditions for bidding so that Inuit firms may readily bid;
(b) invite bids by commodity groupings to permit smaller and more specialized firms to bid;
(c) permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialized firms to bid;
(d) design construction contracts in a way so as to increase the opportunity for smaller and more specialized firms to bid; and
(e) avoid artificially inflated employment skills requirements not essential to the fulfilment of the contract.
24.4.3 Where the Government of Canada or the Territorial Government intends to invite bids for government contracts to be performed in the Nunavut Settlement Area, it shall take all reasonable measures to inform Inuit firms of such bids, and provide Inuit firms with a fair and reasonable opportunity to submit bids.

PART 5: BID SOLICITATION
24.5.1 Where the Government of Canada or the Territorial Government solicits bids for government contracts to be performed in the Nunavut Settlement Area, it shall ensure that qualified Inuit firms are included in the list of those firms solicited to bid.
24.5.2 Where an Inuit firm has previously been awarded a government contract, and has successfully carried out the contract, that Inuit firm shall be included in the solicitation to bid for contracts of a similar nature.
24.5.3 In the absence of competitive bidding for government contracts, qualified Inuit firms will be given fair consideration.

PART 6: BID CRITERIA
24.6.1 Whenever practicable, and consistent with sound procurement management, and subject to Canada's international obligations, all of the following criteria, or as many as may be appropriate with respect to any particular contract, shall be included in the bid criteria established by the Government of Canada for the awarding of its government contracts in the Nunavut Settlement Area:
(a) the existence of head offices, administrative offices or other facilities in the Nunavut Settlement Area;
(b) the employment of Inuit labour, engagement of Inuit professional services, or use of suppliers that are Inuit or Inuit firms in carrying out the contracts; or
(c) the undertaking of commitments, under the contract, with respect to on-the job training or skills development for Inuit.
24.6.2 Whenever practicable and consistent with sound procurement management, and subject to Canada's international obligations, all of the following criteria, or as many as may be appropriate with respect to any particular contract, shall be included in the bid criteria established by the Territorial Government for the awarding of its government contracts in the Nunavut Settlement Area:
(a) the proximity of head offices, administrative offices or other facilities to the area where the contract will be carried out;
(b) the employment of Inuit labour, engagement of Inuit professional services, or use of suppliers that are Inuit or Inuit firms in carrying out the contract; or
(c) the undertaking of commitments, under the contract, with respect to on-the job training or skills development for Inuit.

PART 7: LIST OF INUIT FIRMS

24.7.1 The DIO shall prepare and maintain a comprehensive list of Inuit firms, together with information on the goods and services which they would be in a position to furnish in relation to government contracts. This list shall be considered by the Government of Canada and the Territorial Government in meeting their obligations under this Article.

PART 8: EVALUATION AND MONITORING

24.8.1 The Government of Canada and the Territorial Government, in cooperation with the DIO, shall take the necessary measures to monitor and periodically evaluate the implementation of this Article.

PART 9: IMPLEMENTATION

24.9.1 The objectives of this Article shall be achieved through the allocation or reallocation of government expenditures without imposing additional financial obligations on the Government of Canada or the Territorial Government.

24.9.2 The Territorial Government will carry out the terms of this Article through the application of Territorial Government preferential contracting policies, procedures and approaches intended to maximize local, regional and northern employment and business opportunities.

24.9.3 The Government of Canada, the Territorial Government and the DIO shall conduct a review of the effect of this Article within 20 years of its implementation. If the DIO and the Government of Canada or the Territorial Government, as the case may be, agree after the review that the objectives of this Article have been met, the obligations under this Article of the Government of Canada or the Territorial Government, as the case may be, shall cease within one year of the completion of the review. If the obligations of the Government of Canada or the Territorial Government under this Article remain in effect after the initial review, the Parties shall review the requirement to continue such provisions every five years or at such other times as they may agree.

Appendix 3

Public Consultations Overview

Committee Members: Ron Janusaitis, Alastair Campbell, Jack Donegani, Philip Tagoona, Barry Cornthwaite, Wilfred Wilcox, Brian McLeod, Paul Kaludjak, Laura Kowmuk

Number of Participants: A total of 94 people participated in 14 meetings

During our consultation meetings in Whale Cove, Rankin Inlet, Cambridge Bay, Taloyoak, Iqualui and Kimmerut this is what we heard from those participating in the meeting. While some of the points made by participants may be contradictory, this document is only meant as a listing of points and opinions and is used as a means of providing participants with an opportunity to let us know if a point they made was missed and to provide the Review Committee with a record of what was said.

We thank those who participated and shared their thoughts with the Review Committee. Your input is invaluable in providing us with the first-hand information on the perceived strengths and weaknesses of the NNI Policy. Rest assured that careful consideration will be given to your input during our deliberations in arriving at a final report.

We heard:

- What is in it for the company when it comes to manufacturing?
- Local costs are high and you need to keep your inventory year round
- Apprenticeship program possible in manufacturing
- GN needs to support manufacturers
- 20% is not enough going against computerized factories
- A commitment favourable to manufacturing, like GNWT had, is required
- Manufacturing would fill in seasonal gaps
- Local manufacturer can build, install and maintain the product, customization a plus. Provides opportunities to learn and advance
- Training a problem – don't have the "ticket"
- No problem with NNI Policy and Inuit labour levels that are set
- Don't have a problem meeting the required level of Inuit labour in construction
- % Inuit labour is bumped up to avoid paying bonuses
- Cambridge Bay level is 30-40%
- With mining, more difficult to provide local workers
- Provide more info on NNI Policy to GN employees
- NNI policy is difficult for small businesses to address all requirements in completing forms
- How is % of Inuit labour set?
- % of Inuit labour varies greatly from community to community, in fact it varies from department to department within the same community

- % is raised as levels are achieved
- Contractors may report lower levels than actually achieved to avoid raising the level
- More bonuses are awarded than penalties
- Review other work that is going on in the community
- Housing Corp.'s % Inuit requirements need to be reported to PW&S
- Housing Corp. achieving about 80% Inuit labour levels in Pelly Bay and 35% in Kugluktuk
- No strict rules on setting Inuit labour requirements: in doing so, examine what is going on in the community
- Housing Corp. reports Inuit labour percentages to Manager of Design in Arviat
- Can apprentice employment be included in the NNI?
- One for one apprenticeship rule should be looked at
- Trades training should be included in the NNI Policy
- Nunavut needs trades training facilities both in High Schools and at Arctic College (or similar)
- 8 week courses are done down south, only first year carpentry done in Nunavut
- Apprenticeship options should be presented to Apprenticeship Board
- Training materials should be in Inuktitut
- Testing can be done in writing or orally
- Are apprentices a liability – NO
- Provide incentives to contractors to hire apprentices
- Is it fair to contractors to continually raise % Inuit labour component requirement?
- GN should be able to question the membership on the NTI list of Inuit Firms
- Make sure that Capital Plans are developed each year and discussed with all stakeholders
- Government maintenance contracts – should be mandatory that contractors apprentice. Need to make it worthwhile to contractor.
- Presentation by NewNorth Projects
  - Not impressed with first review
  - Companies that have made a contribution should be heard
  - NTI should not dictate policy
  - Businesses not on the Nunavut Firms List
    - Eligibility of Nunavut business is discriminatory
    - Contributions to economy have been made
    - HQ not in Nunavut penalizes us
    - Benefits to the economy a matter of fact
    - Reconsider criteria for Nunavut business
    - Hiring and training should be considered
    - Contribution to Nunavut should be considered
    - Has office in Nunavut and resident manager
  - Residency for owners should be abolished
  - Put a cap on the amount of the bid adjustments
    - $25,000 up to $1M

  - $50,000 over $1M
- Should offer more than $50k adjustments
- Higher costs here as equipment stays idle for 7 months a year
- Consider employment and training
- No sole source contracts over $50k
- Sole source only small local jobs
- Use open Public Tenders
- Inuit firms are on the GN List
- Follow Article 24 of the NLCA
- Intent of Article 24 of the NLCA has been obscured
- No additional % for Inuit firms based on Articles 24.2.1, 24.3.5, 24.4.2
- Small Inuit firms should have extra help
- Large Inuit firms should have no additional support. Should be the same as other Nunavut firms
- Bid adjustment cap for all contracts
- No cap on all construction contracts
- Make differential between civil and construction contracts
- Caps may make the process unnecessary
- Cap numbers are only meant to stimulate debate
- Contracts should contain
  - Training component
  - Hiring component
  - Apprentices requirement
  - Labour component
- Scrap ownership and recognize employment and training
- Question the whole Inuit firms eligibility and registration on the list
- Focus on benefits to Nunavut not ownership
- Does the Policy require that Headquarters be in Nunavut because of Federal transfer payments
- Income tax paid here when work is done here
- Ownership requirements of NNI take away the value of the company's good will.
- NNI ownership rules take away the incentive to grow the company – great danger when policy is tied to ownership
- Dummy office could be a problem
- Consideration should be given to %'s of Inuit labour, apprentices and manufactures
- GN should be putting more work into setting %s of Inuit labour
- Contracting authorities should be visiting communities before they set Inuit labour levels
- Lots of carpenters doing other work they won't give up for seasonal work of 3-4 months
- More than one capital project in a community can limit the Inuit labour pool
- When numbers are set unreasonably, there is an adjustment made

- Procedures must be updated, look at the Dew Line cleanup model
- More effort must be made to find out what labour is available
- Training must be done
  - Some special certification for skills done
  - Step by step certification
  - Need for more education resources
- NNI can not be used to solve all problems
- Extra incentives to contractors to train
- Tracking system of training that has been done. In any given trade, have certification based on abilities and completion of certification – modular training towards apprenticeship eg framing
- Look closer at supplier status
- Set stage for secondary or even primary manufacturing
- Employment is important
- If a person or firm is only a broker, why do they have supplier status?
- Inuit content levels
  - Set in a reactive and not educated manner
  - Creates an atmosphere of creativity
  - Interest to work on project
  - Inuit labour from throughout Nunavut
- Create Northern and Inuit capacity
- Is the 3% local adjustment good enough?
- Bonding requirement a problem
- Improve feedback to unsuccessful bidders
- Debriefing must be done better
- When an award gets appealed, does award get reversed?
- Presentation done by Norterra
- Ownership requirements in NNI should take into consideration
  - Birth-right corporations
  - Long term development at community level
  - Employee training
  - 50% vs 51%
  - Recognize efforts
- Support Nunavut/Inuit owned businesses
- Not competing against small businesses
- Head office locations should be changed where
  - Operational functions are in Nunavut
  - Outside of Nunavut profits go back to Nunavut
  - Regional offices should be recognized where they have the ability to make decisions

Suppliers

- Presentation by Norterra Continued
- Nunavut owned business very important
- Ownership must be in Nunavut

- Major operations must be here
- Employ and train Inuit and Nunavut residents
- 3-5 year contracts are of interest only, when one is lost it means loss of jobs for that period.
- Presentation made by Northern Properties
- Nunavut ownership criteria is discriminatory and punitive and should be scrapped
- Non-Nunavut firm has made a contribution to Nunavut economy
- Headquarters and ownership are not important
- Contributions to Nunavut and its communities are more important
- In order to be on the GN NNI list the business should have a resident manager and a local office
- Remove ownership criteria
- NNI should not be applied to real-estate leases either commercial or residential.
    - Adjustments make more sense during construction
    - There are no benefits in giving an adjustment on the lease
    - Set costs, utilities, insurance, repairs etc go to same source
- Look at where profits go, Nunavut or South
- Reinvest profits in community that has been fair to you
- Profits are paid out to shareholders wherever they are
- Local business cited an example where a bid on a contract was made but no adjustment was given because the service was not to be delivered in Nunavut
- Presentation by Arctic Co-Ops
    - Suggest that penalties be applied when a contractor does not use the services they indicate they will – sub-contracts (hotel)
    - Sub-contractor should receive any penalty money as compensation
    - Exclusions from policy are a problem e.g. Two Inuit firms bid for the fuel contract without NNI adjustment and lost it to a southern firm
    - More training requirements in GN contracts
    - Hotel stays, including B&Bs, when included in any contract must be formalized in policy and apply to all GN departments and Crown Corps.
    - Hotel debts should be cleared as all other sub-contracts before holdback is released
- If hotels must be used, the standard of accommodation and food must go up.
- GN should negotiate in advance the hotel rates along with terms and conditions and include this in the bid package
- Hotels must make money when they can, not always used. It could be 5-10 years between capital projects in a small community
- Original BIP was used to ensure that goods and services were available to whole community at a reasonable rate
- Level playing field between North and South
- The concept of "Reasonable Price" is important for government to make sure it is not being gouged

- GN should regulate local services such as cartage and accommodation to avoid gouging
- Determine ownership and differentiate between private business and corporations
- Apply NNI differently for small business and corporations
- Make difference between real business and paper ones
- Investigate who really runs the business
- Northwest Company provided written submission and made a presentation
  - 750 employees
  - Contribute to the economy of Nunavut
  - Train managers some of whom have gone on to other jobs
  - Would like a response to their submission
  - Wants policy amended to recognize their major contribution to Nunavut through employment, training and in-kind contributions
- Goodwill is eroded by NNI policy ownership rules
- Support and recognition of small businesses is needed
- Support should not be for large corporations
- Too many Inuit firms are not owned or operated by Inuit
- A critical balance between Small and large businesses and between Inuit and non-Inuit firms must be reached
- GN needs to ensure that contractors use Nunavut suppliers
- GN should set or negotiate prices for goods with suppliers and include them in the bid package
- GN should pre-purchase supplies for construction jobs
- Separate tender for supplies from the construction tender
- Develop Nunavut manufacturing sector and recognize that there are supply, shipping and inventory problems in the territory
- Use labour only contracts and tender the house package separately
- Level of Inuit labour is not same quality as southern labour
- Nunavut manufactured goods are not of the same quality as southern goods
- Little Inuit owned business must compete head on with Nunasi, not fair. Lose contracts all the time. Can't grow or make ends meet. Don't have the volume.
- When no work, no money. Can't stay in business that way. Should just work for GN
- High cost of running a business must be recognized, especially true for small business that can't spread it out, rent, utilities, freight
- Need support for small business
- Do not want big businesses back on the GN's NNI list (airlines)
- Waited a log time for them (airlines) to come off list. Leave them off.
- Do a study to see how this policy affects existing businesses
- NNI helped me get a job
- Bonuses and penalties go to general contractor only not to sub-contractors. If general-contractor doesn't meet the target, the sub-contractor gets penalized. The sub-contractor may achieve over 60% but the general contractor gets the bonus

- Develop a different system of bonuses and penalties for general and sub-contractors
- Scrap bonuses and penalties completely
- The % to meet the Inuit labour component is set too high. In Coral Harbour it is set at 75% (Housing Corp) – Some set at 80-85% - and this is too high
- Can't get a certified plumber or electrician in Coral harbour or Whale Cove
- Set a standard % of Inuit content across the board for all contracts
- Prices are raised to offset the penalty when bidding high to get the job
- Have the option to waive bonuses and penalties at the beginning of the contract
- Set a higher level of Inuit content to see what the trend would be
- Push for more training
- Problem with a lack of skilled workforce
- The rule of having only one apprentice per journeyman a problem
- Nunavut needs trades people
- Kivalliq Partners In Development & HRDC working to bring upgrading courses to community
- Education needs to work on getting more students coming out of schools wanting to get into trades. Put shops in schools
- Arctic College needs to be set up better to deliver trades training
- Seasonal workforce is a problem
- Apprenticeship entrance getting more difficult because of new technology
- People get trained by small contractors then they go to government for full time job
- Setting the Inuit content % high causes us to lie in our bid to get the job
- Housing Corporation setting the % of Inuit labour very high
- Housing Corporation does not report stats to Public Works & Services
- Its very scary when GN does not use the NNI Policy – as in the Kivalliq Health Centre
- Kivalliq Health Centre was a Cabinet Decision
- Concerned it will become a trend (not following Policy)
- Parks contracts give Inuit first crack at contracts based on Article 5 of Nunavut Land Claims Agreement
- Ship, Supply and Erect seems to work well for contractors. Possibility of breaking up jobs?
- Breaking contracts by trade caused a problem for Housing Corp.
- Labour only contracts can sometimes be bad
- There is less risk with labour only however
- Why not recognize businesses that over-achieve when it comes to Inuit hire?
- Better policing of "bogus" Inuit firms is needed
- NTI is reviewing its list of Inuit businesses
- Suppliers are priced out of the market even by Iqaluit firms as their costs are lower
- Big price items come from Iqaluit

- LCA limits should be better explained to GN employees
- GN should only buy locally
- GN should not be ordering directly from local businesses' southern suppliers
- Local people need jobs so business must be done locally
- GN should not have option of buying south
- Local businesses have higher overhead and this needs to be recognized. 3% local bid advantage is not high enough
- Nunavut Development Corporation presentation
  - NNI Policy status a problem since NDC is considered a "crown corporation" but its subsidiaries are all Inuit joint ventures
  - Can't bid on contracts unless a minority interest
  - NDC creates about 650 jobs in Nunavut and generates about $7 M in revenues
  - Meat plant in Coral Harbour pays about $800,000 in wages each month
  - Employs hunters, carvers, etc.
  - Can export but can not sell direct
  - Printing and embroidery can't compete with south
  - Fish and meat plants can't sell to jails as example
  - In business no one else does
  - Should be considered because of their job creation, investment and community support
- Community owned businesses should be supported
- Look at what a business does for the community
- Look at a preference for locally manufactured goods
- $100, 000 cap has no effect
- Bundling of purchases is a real problem for small businesses as NNI component very small component
- Level of Inuit involvement should be standardized
- What is the highest level of Inuit labour possible?
- There is a lack of trades people in the communities
- What is the target group for labour component, labour or skilled?
- Limited funding from the Dept. of Ed.fFor more apprentices
- What types of jobs are targeted on a project for Inuit content, labourers, management?
- Arctic College needs to be proactive in training people for upcoming work
- Monitoring of Inuit content needs to be done for setting %
- Contractor should be held to % bid not to minimum required. Aggressive policing of contractors is necessary
- Bonus should be based on the previous year's experience
- Adjust next season from past performance
- GN does not have a good handle on the types or number of projects in communities
- Hamlet operations should be subject to NNI and it should be enforced
- Hamlet only uses NNI in specific contracts
- How do you justify % Inuit component levels if challenged?

- Penalty based on bid not minimum
- Arctic College cancelled Building Maintenance Program
- Apprenticeships as part of maintenance contracts
- Don't get rid of bonuses and penalties
- No one wants to go into trades anymore. High School grads want nice gov't job.
- Need to partner with HRDC to bring courses to people.
- Certification getting tougher – new technologies.
- When construction companies train, they lose trainees to Housing Corp, etc.
- Need "shops" in HS.
- Government has become a "Gestapo" re monitoring contractors.
- Will our input be heard? Information tends to be "put on the shelf"
- Year after year, contractors are coming from the south to put up buildings
- Local people don't have trades certification for employment when contractors come into town
- Contracting authority should come to the community to see who could do the work
- Process of bidding is difficult
- Local people don't fill out the forms as they think it won't get approved – process too complicated
- Someone should come to the community to help people fill out the forms – NTI or GN
- Local people don't have equipment to do the work
- GN should develop a management team to manage projects themselves in small communities to increase local usage and training
- Raise the bonding requirements
- Waive bid security. Could raise bid security
- Give help on bonding to local people
- Use the holdback process for security
- Things can be done better locally
- Raise % of Inuit labour required
- Give consideration to local people even though they don't have papers
- Notices for tenders need to be seen in the community, as they once were, not just put in the newspaper
- Send tender notices to the hamlet
- GN needs to put more money for short-term courses for painting, plumbing, boilers, etc.
- Assistance needed for small business owners. Develop a "Business Management " program for small contractors
- Many people have good skills but can't run a business
- Why buy computers from north when you get better prices and service from south?
- Some Nunavut computer suppliers are cheaper than direct purchase from Dell
- Have bought sub-standard hardware in the north

- GN should share buying experience
- Look at years of experience for locals
- Make a local person the foreman on the job. More local respect
- Bonus to complete job faster given to the workers
- Need better access to funding, easier applications
- Consider start-up funding for small businesses
- One source for all funding information – develop list
- Get message out to EDOs
- GN not following policy of supporting local business
- NPC and Health stay in their own accommodations
- Local businesses must be supported
- The status of NTCL and Canadian North must be re-examined
- 51% ownership needs to be checked for Inuit firms
- Nunasi headquartered in GNWT but 100% Nunavut Inuit owned?
- Follow the spirit and intent of the policy
- More local jobs needed
- Sealing council to be created to help market local products
- Support local products
- Hamlet must follow NNI Policy. Problem with housing rented from southern company
- Everyone must follow policy
- Use local accommodation
- Government must "lease back housing from locals"
- Does the NNI involve me? I make clothing?
- Housing the only construction. Good Inuit labour content on these projects
- Foreman brought in but labour all local
- Community infrastructure deficient
- Internet access limited to dial-in at long distance rates and slow
- Hamlet buys directly from Grand and Toy not from an Iqaluit business
- Local manufacturing of meat and fish products only for sale in territory
- Locally produced products, jewelry, one of a kind. Little mass-produced
- .Job sharing more suited to many residents' lifestyles
- More contracts are being awarded to local companies.
- Over the last few years, more local bidding and more government contracts being won
- Problem with knowledge of NNI, no workshop done in community.
- Will provide a written submission
- 3 years ago Rankin group got contract for airport road. Local group complained.
- Not sure if locals are familiar with NNI Policy
- No GN workshop held in this community on the NNI Policy

Appendix 4

Nunavummi Nangminiqaqtunik Ikajuuti

Prepared by

The GN / NTI Contracting Working Group

March 17, 2000

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Appendix A: Definitions

Nunavummi Nangminiqaqtunik Ikajuuti

1.0 Coming Into Effect

1.1 This Policy is in effect on and after April 1, 2000 for every contract initiated on or after April 1, 2000.

2.0 Replacement

2.1 On its coming into effect, the Policy replaces the Nunavut Contract Procedures for the Nunavut Settlement Area and the Nunavut Business Incentives Policy. Any guidelines or directives previously issued under those two replaced policies continue in effect until otherwise modified, but shall be interpreted so as to comply with the Policy.

3.0 Authority

3.1 In exercising its wider responsibilities and prerogatives, the Cabinet may, on an exceptional basis, depart from the application of provisions of the Policy.

4.0 Title:

4.1 The Policy is entitled the "Nunavummi Nangminiqaqtunik Ikajuuti" or "NNI Policy".

5.0 Application

5.1 Subject to sections 5.2 and 5.3, the Policy applies to the design, award, administration and interpretation of any Contract:

(a) to which the Government of Nunavut, or any of its Public Agencies or Public Boards as described in the Financial Administration Act is a party;

(b) where the Government of Nunavut provides, directly more than 51% of the total Contract funds; and,

(c) where the Government of Nunavut provides, directly more than 51% of the annual operating funds of one of the parties.

5.2 The Policy does not apply to:

(a) a contract that provides the Government of Nunavut with insurance against liability;

(b) a Government of Nunavut Employment Contract; or,

(c) a contract for the supply of emergency services,

5.3 Unless otherwise agreed by the Government of the Northwest Territories, the Policy does not apply to a contract where one of the parties is:

1) a public body that is administered on behalf of the Government of Nunavut by the Government of the Northwest Territories; or,

2) a joint body of the Government of Nunavut and the Government of the Northwest Territories.

6.0 Definitions

6.1 Unless otherwise required by the context, terms used in the Policy have the meanings set out in Appendix A.

7.0 Policy Objectives

7.1 The Policy has the following objectives:

(a) Good Value and Fair Competition
To secure goods and services for the Government of Nunavut at the best value, recognizing the higher cost of doing business in Nunavut, and using a contracting process that is clear, fair and equitable.

(b) Strengthening the Nunavut Economy
To build the economy of Nunavut and its communities by strengthening business sector capacity and increasing employment.

(c) Inuit Participation
Subject to ss.16(2), to bring about a level of Inuit participation in the provision of goods and services to the Government of Nunavut that reflects the Inuit proportion of the Nunavut population.

(d) Nunavut Education and Training
Subject to ss.16(2), to increase the number of trained and skilled Nunavut Residents in all parts of the workforce and business community to levels that reflect the Inuit proportion of the Nunavut population.

8.0 The Bathurst Mandate

8.1 The Policy has been developed in a way consistent with the Government of Nunavut's 1999 Bathurst Mandate.

9.0 The Clyde River Protocol

9.1 The Policy has been developed in cooperation with Nunavut Tunngavik Incorporated in a way consistent with the "Protocol to Govern Working Relations Between the Government of Nunavut and Nunavut Tunngavik Incorporated" ('the Clyde River Protocol'), signed in November 1999

10.0 Relationship to Nunavut Land Claims Agreement (NLCA)

10.1 The Policy is aimed at implementing the Government of Nunavut's obligations under Article 24 of the NLCA.

10.2 The Policy shall be interpreted so as to respect to the letter and intent of the NLCA.

11.0 Evaluation Process and Bid Adjustment

11.1 The evaluation process for the award of Tenders and for the cost criteria portion of Requests for Proposals shall be as follows:

(a) all Tenders submitted should meet minimum contract requirements specified in the request for tender or proposal and should demonstrate a capability of carrying out the work;

(b) all Tenders meeting the requirements of 11.1.a and the cost criteria of relevant Proposals shall then be adjusted based upon Nunavut Business status, Inuit Firm status, and Local status of the proponent, general contractor, subcontractors, and suppliers, including the labour component;

(i) the adjustment for the labour component shall be based on estimates of payroll expenditures made by the general contractor, subcontractors and suppliers, for Nunavut, Inuit, and Local payroll expenditures that form part of the bid; and,

(ii) in the absence of any qualitative or contrary considerations based on quality of goods and services, conduct, past performance, or other like considerations, the lowest tender after adjustments shall be awarded the contract.

(c) the bid adjustment values shall be as follows:

(i) Nunavut firm status, an adjustment of 14%;

(ii) Inuit firm status, an additional adjustment of 3%;

(iii) Local status, an additional adjustment of 3%

11.2 The evaluation process for the award of Proposals shall be as follows:

(a) all Proposals submitted should meet minimum contract requirements specified in the Request For Proposals and should demonstrate a capability of carrying out the work;

(b) all proposals meeting the requirements of 11.2.a will be evaluated to determine which appears to offer the best overall value to the Government of Nunavut, based on the evaluation criteria established in the RFP;

(c) for Proposals where there is a clear cost criteria the bid adjustment values outlined in 11.1.c will be applied to that portion of the evaluation;

(d) Inuit content criteria will be included in the evaluation criteria established for each RFP. The Inuit content values shall be, at a minimum, as follows:

(i) for Inuit employment 10%

(ii) for Inuit ownership 5%

11.3 Details of the evaluation process shall be further described in procedures developed by the Responsible Department and made available to the public.

11.4 The bid adjustment values for goods contracts will be applied to the first $100,000.00 only.

11.5 Evaluation criteria, consistent with the Policy Objectives contained in 7.0, and based on the Bid Adjustment Values and Content Ratings identified in this section, may be developed by the Responsible Department for specific types of professional services contracts or other distinctive sub-categories of contract.

12.0 Bonuses and Penalties

12.1 Contracts may provide for:

(a) a bonus that shall be applied in the event that minimum threshold requirements set by the Contracting Authority in the request for tenders or proposals have been exceeded; or,

(b) a penalty that shall be applied in event that minimum threshold requirements set by the Contracting Authority in the request for tenders or proposals have not been met.

12.2 Where applicable, bonuses or penalties shall apply with respect to Inuit participation in employment, project management, and training.

12.3 Where applicable, in the area of employment, a bonus or penalty shall be calculated as 1/3 of 1% of the total labour content of the contract for each 1% of the amount by which employment either exceeds or does not meet the mandatory requirement.

12.4 Bonuses and penalties shall be calculated for Local Inuit Labour and/or Nunavut Inuit Labour.

12.5 In the area of Inuit management, a bonus or penalty in the amount of 2% of the total labour content shall be determined on the basis of whether an Inuk is employed as a Project Manager, either locally or for Nunavut. A larger bonus, but not a larger penalty, of an additional 1% shall be determined for a locally employed Inuk Project Manager than a Nunavut employed Inuk Project Manager.

12.6 Where applicable, a bonus or penalty shall be determined on the basis of on-going evaluation as to whether Inuit are provided training in the following areas:

(a) entry level or support positions, involving the performance of basic tasks; and,

(b) apprenticeship or development positions, involving on-the-job training and classroom instruction aimed at professional skills and accreditation;

12.7 Bonuses and penalties shall be determined for the provision of training to both non-Local Inuit and Local Inuit.

13.0 Maximum Bonuses and Penalties

13.1 The maximum total bonuses and penalties to be determined for a single Contract for employment, management, and training shall not exceed 25% of the total labour price.

14.0 Monitoring and Enforcement Procedures

14.1 Monitoring and enforcement procedures shall be developed and applied:

(a) generally, to ensure compliance with the Policy by Contractors;

(b) more specifically, to ensure that bonuses and penalties are based on actual performance;

(c) to ensure that the Policy is applied consistently across departments of the Government of Nunavut, the various regional and local offices of those departments, and those GN Public Agencies and Boards set out in the Financial Administration Act.

15.0 Application of Monitoring and Enforcement Procedures

15.1 Each Contract Authority within the Government of Nunavut is responsible for monitoring and enforcement of Contracts under which it expend funds.

15.2 Each Contract Authority within the Government of Nunavut shall provide monitoring and enforcement information to the Responsible Department in a manner that may be stipulated by that department.

15.3 The Government of Nunavut, through the Responsible Department shall provide Nunavut Tunngavik Incorporated with information in a timely manner regarding the outcomes of its monitoring and enforcement activities.

16.0 Periodic Review

16.1 It is recognized that achieving the objectives of the Policy will require consistent and persistent effort.

16.2 It is further recognized that the achievement of objectives may be most realistically and reliably secured by measured progress over time.

16.3 The substance and application of the Policy should therefore be reviewed and revised on a periodic basis to ensure that progress towards objectives is being made in a demonstrable and balanced way.

17.0 Review Committee

17.1 A Contracting Policy Review Committee, consisting of representatives appointed by the Government of Nunavut and Nunavut Tunngavik Incorporated, shall be established to review the implementation of the Policy on a periodic basis and, in any event, at least on an annual basis.

17.2 As part of its mandate, the Review Committee shall develop and apply specific mechanisms for assessing progress towards objectives and making recommendations for adjustments to the Policy.

17.3 As part of its mandate, the Review Committee shall examine monitoring and enforcement concerns arising out of the implementation of the Policy.

17.4 The Review Committee will conduct a comprehensive review at the end of the first three-year period, and every five years thereafter

17.5 The Review Committee shall submit all of its work to the Government of Nunavut and Nunavut Tunngavik Incorporated.

17.6 In carrying out its work, the Review Committee shall make efforts to collect public input and to consult with interested parties. Without limiting the ability of the Committee to make other parts of its work available to the public, these annual and multi-year reviews shall in all cases be made available to the public.

18.0 Appeals and Arbitration

18.1 A Contractor that has submitted a proposal or Tender and that wishes to challenge an award of Tender or proposal may do so within five (5) days of the award announcement by directing the challenge to the Contracting Authority. The Contracting Authority shall have five (5) business days to respond to the challenge.

18.2 Any further challenge of an award shall be directed in writing to a Contracting Appeals Board.

18.3 An independent Contracting Appeals Board shall be formed, consisting of the representatives of three parties, appointed to terms of two years. A representative shall be appointed by each of the following :

i) the Government of Nunavut;

ii) Nunavut Tunngavik Incorporated; and,

iii) the Nunavut Chambers of Commerce.

18.4 The Board shall convene within 21 days of receiving a challenge.

18.5 Upon hearing a challenge, the Appeals Board may:

i) uphold the award; or

ii) recommend remedial actions.

18.6 The decision of the Appeals Board shall be binding and final.

18.7 If, in the sole opinion of the Appeals Board, a challenge of an award is frivolous or vexatious, then the Board may seek administrative costs against the party who brought the challenge.

18.8 An annual report, including financial statements, shall be prepared by the Appeals Board and submitted to the Government of Nunavut and to Nunavut Tunngavik Incorporated. In addition, these annual reports shall be made available to the public.

18.9 Notwithstanding that an appeal may be pending, the Contracting Authority may award the Contract.

19.0 Financial Resources

19.1 The expenditure of funds by the Government of Nunavut under the Policy is conditional on approval of such funds in the Main Estimates by the Legislative Assembly and on there being a sufficient uncommitted balance in the appropriated item for the fiscal year in which the expenditure is required, and on meeting such further requirements as may be set out in the Financial Administration Act.

20.0 Transition for Certain Businesses

20.1 The Government of Nunavut recognizes the contribution made to the Nunavut economy by a number of companies that have operated for many years in Nunavut that do not qualify as a Nunavut Business under this Policy. Accordingly, any business that, immediately before the coming into effect of the Policy, qualified as a Nunavut Business for the purpose of the Business Incentives Policy, shall qualify as a Nunavut Business under this Policy until the second anniversary of the coming into effect of this Policy.

20.2 For greater certainty, section 20.1 shall cease to have any application on the second anniversary of the coming into effect of the Policy and no business shall continue to qualify as a Nunavut Business or Inuit Firm unless it meets the definitions for those terms

set out in Appendix A.

21.0 Revisions to or repeal of this Policy

21.1 Cabinet may make changes to this policy consistent with the obligations of the Government of Nunavut in Article 24 of the Nunavut Land Claims Agreement which requires a collaborative process with Nunavut Tunngavik Inc. in the maintenance of preferential procurement policies, procedures and approaches.

APPROVED BY CABINET

DATE:

_____

Paul Okalik, Premier

Includes Appendix A – Seven pages

APPENDIX A: DEFINITIONS

The following definitions apply to the Policy and its Procedures.

Article 23 - the Article of the Nunavut Land Claims Agreement dealing with Inuit Employment within Government.

Article 24 - the Article of the Nunavut Land Claims Agreement dealing with Government Contracts.

Bid - a tender or an offer to sell or provide goods, services, or construction that is submitted to a Contract Authority in response to a Request for Bids or Tenders.

Bid Adjustment - the amount by which the face value of a Bid is reduced in accordance with Section 6(2) of this Policy. The Bid Adjustment is used for Bid evaluation purposes only. The Bid price minus the Bid Adjustment will be referred to as the adjusted price.

Bid Security - security given by a Bidder or Proponent to guarantee entry into a Contract.

Bidder - an individual, partnership, corporation, society or co-operative who submits a Bid.

Contract - a written agreement between a Contracting Authority and another party to provide goods, perform services, construct public works, or lease real property, for consideration, and includes

i. Contracts for the supply of goods.

ii. construction Contracts.

iii. Contracts for the supply of services.

iv. leases.

Contract Authority - a Government of Nunavut Minister, a Deputy Minister, or a public officer with the duties and authorities set out in the Financial Administration Act and Regulations thereto.

Contract Price - the price or price formulated in a Contract.

Contract Security - a deposit of securities by the Contractor which the Contracting Authority may convert to carry out the Contractor's obligations under the Contract.

Contractor - a corporation, partnership or individual that has been awarded a Contract for the execution of work or services under the terms of a Contract.

DIO - Nunavut Tunngavik Incorporated or such other Inuit organizations that, from time to time, Nunavut Tunngavik Incorporated may, by notice to the Government of Nunavut, designate.

Employment Contract - a Contract which establishes an employer-employee relationship.

Financial Administration Act - the Financial Management Act, R.S.N.W.T 1990 (as adopted by Nunavut) c. F-3 and amendments thereto.

General Contractor - a Contractor who contracts to undertake an entire Contract, rather than a portion of the Contract.

Goods Contract - a Contract for the purchase of articles, commodities, equipment, goods, materials or supplies which may include installation.

Government - the Government of Nunavut.

Government of Nunavut - all Territorial Government departments and all public agencies defined by the Financial Administration Act, S.N.W.T. 1987 (1), c.16, Part IX, and Schedules A, B, and C, as amended for Nunavut pursuant to s.29 and 76.05 of the federal Nunavut Act but excluding the Northwest Territories Power Corporation.

Inuit (singular: Inuk) - ***a person described in Article 1.1.1 of the Nunavut Land Claims Agreement (NLCA) and who has enrolled himself or herself on the Inuit Enrolment List under Article 35 of the NLCA.***

Inuit Content - the dollar value of the goods and services required by the Contract supplied by any Inuit Firm or Inuit sole proprietorship, and Inuit Labour. Inuit Content may include:

i. goods and services supplied by an Inuit Firm or Inuit supplier acting as the General Contractor. These are referred to as "own forces";

ii. goods and services supplied by an Inuit Firm or Inuit supplier so long as these goods and services are required for the completion of the Contract and are paid for by the Contract.

iii. Inuit labour by an Inuit Firm or a non-Inuit Firm

Inuit Enrolment List - the list of Inuit maintained by Nunavut Tunngavik Incorporated under Article 35 of the Nunavut Land Claims Agreement.

Inuit Firm - an entity which complies with the legal requirements to carry on business in the Nunavut Settlement Area, and which is

i. a limited company with at least 51% of the company's voting shares beneficially owned by Inuit, or

ii. a cooperative controlled by Inuit, or

iii. an Inuk sole proprietorship or partnership; and

iv. able to present evidence of inclusion on NTI's Inuit Firms Registry.

Inuit Firms Registry - the list of Inuit Firms that is maintained by Nunavut Tunngavik Incorporated in accordance with Article 24.7.1 of the Nunavut Land Claims Agreement.

Inuit Labour - labour, including professional services, provided in any capacity by an Inuk or Inuit, and not necessarily through an Inuit Firm.

Inuit Training – Training of an Inuk or Inuit related to a specific Contract that has been pre-approved by the Contract Authority.

Inuk Project Manager - an Inuk [ordinarily resident in the Subject Community] who is capable of undertaking all aspects of the management of the project, and has decision-making authority over day-to-day matters affecting the project.

Invite - to call publicly for Bids.

Local Business - a Nunavut Business which has been resident in the Subject Community for the four months prior to application and in addition complies with the following criteria:

v. maintains an approved place of business by leasing or owning office, commercial or industrial space or where applicable, residential space, in the community on a year-round basis for the primary purpose of operating the subject business, and

vi. maintains a Local Resident Manager, and

vii. undertakes in the Subject Community the majority of its management and administrative functions related to its operations in the Subject Community, and

viii. has applied for and received designation as a Local Business at least two weeks prior to the Tender opening.

Local Content - the goods and services required by the Contract and supplied by any Local Business or Local Labour. Local Content may include:

i. goods, services or labour supplied by a local business acting as the General Contractor. These are referred to as "own forces";

ii. goods, services or labour supplied by any other Local Business or Local Supplier that are required for the completion of the Contract and are provided for by the Contract.

Local Labour - labour of Local Residents related to a Contract, not necessarily through a Local Business.

Local Resident - a Nunavut Resident who has been ordinarily resident in the subject community for the last four months.

Local Resident Manager - a Local Resident who is capable of undertaking all aspects of the management of the Local Business and has absolute decision-making authority over day to day matters affecting the Local Business. The Government of Nunavut may waive this requirement in the case of a newly appointed Local Resident Manager, on proof that within six months the Local Resident Manager will have met the residency requirements.

Local Supplier - a supplier of goods in the Subject Community, to whom the public has access and from whom the public may purchase directly from a Representative Inventory of items offered for sale. The supplier must be and must have been a Local Resident for the four months prior to application. The Government of Nunavut may recognize as a Local Supplier a business that does not "physically" carry in inventory specific goods due to factors such as high cost/low demand, made-to-order goods, or articles of a nature that the Government is the sole requisitioner.

Nunavummi Nangminiqaqtunik Ikajuuti (NNI) - the name of this Policy in Inuktitut, meaning "Assistance for Nunavut Businesses."

Nunavummi Nangminiqaqtunik Ikajuuti Business Directory - the list of Nunavut Businesses that have applied and met the requirements of the NNI for Nunavut Business Status.

Nunavut Business

A business which complies with the legal requirements to carry on business in Nunavut, and meets the following criteria:

v. is a limited company with at least 51 percent of the company's voting shares beneficially owned by Nunavut Residents, or

vi. is a co-operative with at least 51 percent of the Residents' voting shares beneficially owned by Nunavut, or

vii. is a sole proprietorship, the proprietor of which is a Nunavut Resident, or

viii. is a partnership, the majority interest in which is owned by Nunavut Residents and in which the majority benefits, under the partnership agreement, accrue to Nunavut Residents and complies with :

ix. maintains a registered office in Nunavut by leasing or owning office, commercial or industrial space or in the case of service oriented businesses, residential space, in Nunavut on an annual basis for the primary purpose of operating the subject business, and

x. maintains a Resident Manager, and

xi. undertakes the majority of its management and administrative functions related to its Nunavut operations in Nunavut, and

xii. has received designation as a Nunavut Business at least two weeks prior to the Tender opening.

Nunavut Content - the goods and services required by the Contract and supplied by any Nunavut Business or Nunavut Supplier. Nunavut Content may include:

i. goods, services or labour supplied by a Nunavut Business acting as the General Contractor. These are referred to as "Own Forces";

ii. goods, services or labour supplied by any other Nunavut Business or Nunavut Supplier that are required for the completion of the Contract and are paid for by the Contract.

Nunavut Resident - a person who:

i. is on the NTI Inuit Enrollment List; or has spent the last twelve months ordinarily resident in Nunavut, and

ii. has a valid Nunavut Healthcare Card and/or other accepted proof of residency such a Nunavut General Hunting Licence, a Nunavut Driver's Licence, a lease or rental receipt, and provides a physical address where residing.

Nunavut Supplier - a Nunavut Business that is a supplier of goods to which the general public has access and from whom the general public can purchase directly from a Representative Inventory of items offered for sale.

Nunavut Land Claims Agreement (NLCA) - the Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada, signed on May 25, 1993, and any amendments thereto.

Nunavut Tunngavik Incorporated (or NTI) - the corporation incorporated under the Canada Corporations Act, and the Inuit party to the Nunavut Land Claims Agreement.

Own Forces - goods, services or labour supplied by a Nunavut Business acting as the General Contractor.

Professional Services - services such as legal, accounting or consulting services provided to the Government of Nunavut by way of a Contract by an individuals or professional service companies.

Proponent - an individual, partnership, corporation or cooperative who submits a Proposal.

Proposal - an offer, either unsolicited or in response to a Request for Proposals, to propose a solution to a problem, need or objective, under stated terms and conditions.

Public Agency - any public agency defined by the Financial Administration Act, S.N.W.T. 1987 (1), c.16, Part IX, and Schedules A, B, and C, as amended for Nunavut pursuant to s.29 and 76.05 of the federal Nunavut Act, but excluding the Northwest Territories Power Corporation.

Public Board – Those boards defined as Public Boards in the Financial Administration Act Regulations concerning Government contracts.

Public Tender - a Request for Bids made by public advertisement.

Qualification Committees - committees in the Kivalliq, Kitikmeot, and Baffin Regions chaired by the Responsible Department, and responsible for determining the eligibility of businesses to be included on the **Nunavummi Nangminiqaqtunik Ikajuuti Directory.**

Request for Bids - a document defining the minimum standards to be met by Bidders and the specific requirements for goods, services or construction, so as to permit the comparison of Bids on the basis of price.

Request for Tenders - a document defining the minimum standards to be met by Tenderers and the requirements of the Contract so as to permit the comparison of Bids on the basis of price.

Request for Proposals - a document inviting companies to propose a solution to a problem, need or objective, so as to permit the comparison of proposals on the basis of a number of factors including price.

Representative Inventory - for a company that is a supplier of goods, an inventory stored in the community where the company is located, that consists of the type of goods that the supplier deals in. The inventory volume should be large enough to generally to meet the demand of Local and Nunavut Residents and is to be re-stocked as goods are sold so that goods are usually available off the shelf.

Resident Manager - a Nunavut Resident who is capable of undertaking all aspects of the management of the Nunavut Business and has absolute decision making authority over day-to-day matters affecting the Nunavut Business. The Government of Nunavut may waive this requirement in the case of a newly appointed Resident Manager, on proof that within six months the Resident Manager will have met the residency requirements.

Responsible Department - The Department of the Government of Nunavut which holds responsibility for implementing the Nunavummi Nangminiqaqtunik Ikajuuti Policy.

Security - cash, a bank draft or certified cheque payable to the Government, or such other Security specified in the Request for Tender or Contract documents.

Solicit - to request Bids from a limited number of businesses based on some form of pre-qualification.

Standing Offer Agreement - a method of supply used to provide direct access to sources of supply for goods and/or services, on an as-needed basis, for specific periods of time, at prearranged prices and delivery conditions.

Subcontractor - includes any party that does not have a direct Contract with the owner, **or** has entered into a Contract with the General Contractor to supply goods or services that will be incorporated into the entire project covered by the Contract.

Subject Community - the community or communities wherein or adjacent to where the Contract performance is undertaken. Where the work is undertaken outside the legal boundaries of a community, the Government of Nunavut may:

i. define "community" to include that adjacent community in any case, or

ii. define "community" to include both or all adjacent communities, where two or more communities, such as Hall Beach/Igloolik and Arctic Bay/Nanisivik, are both very close to the work site.

iii. The name(s) of the Subject Community or Communities to be included in the term "Subject Community" for the purpose of receiving a local preference shall be specified in all Tender documents and Contracts.

Tender - a Bid or offer to sell or provide goods, services, or construction that is submitted to a Contract Authority in response to a Request for Bids or Tenders.

Tenderer - a person, partnership or corporation who submits a Tender.

Tender Adjustment - the amount by which the face value of a Tender is reduced in accordance with Section 6(2) of this Policy. The Tender Adjustment is used for Bid evaluation purposes only. The Tender price minus the Tender Adjustment will be referred to as the adjusted price.

Training - training related to a specific Contract, that has been pre-approved by the Contract Authority.

Appendix 5

2001 NNI Recommendations

	Recommendations	Actions Taken
1	**Feedback to Unsuccessful Bidders** That the GN further develop guidelines for Contract Authorities to provide consistent and constructive feedback to unsuccessful bidders/proponents to explain why their submission was unsuccessful and how they can improve future submissions	The standard regret letter to unsuccessful bidders was revised to indicate to the bidder the reason the bid was unsuccessful. This letter is now in use by the PWS Regional Projects Offices. The regret letter to unsuccessful proponents was also updated with clearer instructions on what kind of information to include.
2	**Evaluation Criteria for Request for Proposals** That the GN develops clear criteria for determining Inuit Content in Evaluation/Rating Criteria for Requests for Proposals, including management, labour and training, and that these criteria will, where practicable, be standardized across all departments.	No action to date. Any standard language with respect to NNI or Inuit Content for GN RFP templates requires consultation with NTI. Note: RFP Templates are now under review and standard NNI/NLCA clauses may be modified in consultation with NTI.
3	**Training in Use of Evaluation Criteria** That the GN provide training to Contract Authorities and any appropriate GN staff in development and use of Evaluation/Rating Criteria used in the evaluation of ~~RFPs~~ proposals	On-going. A draft procedure is currently under development to provide more detailed instructions on how to apply NNI bonus points in evaluating proposals for consulting services, and how to rate a proposal's Inuit Content in both Consulting Services proposals and General Goods & Services proposals.
4	**Review of Procedures** That the GN and NTI review the GN Contract Procedures Manual for conformity to the NNI Policy for the 2002/2003 contracting season.	On-going. Awaiting comments from NTI. PW&S Contracts has a number of manual reviews. All changes subject to final review and incorporation – target date is new fiscal year. May also be subject to policy changes resulting from Comprehensive Review.
5	**Consistency with NCLA** That the GN review its contracting practices to ensure they are consistent with the goal of achieving the objectives of the Nunavut Land Claim Agreement Article 24, ss 24.4.2 c) and d): *"In inviting bids on government contracts in the Nunavut Settlement Area, the Government of Canada and the Territorial Government shall provide all reasonable opportunities to Inuit firms to submit competitive bids, and, in doing so, shall take, where practicable and consistent with sound procurement management, the following measures:* ... *c) permit bids for goods and services for a specified portion of a larger contract package to permit smaller and more specialized firms to bid* *d) design construction contracts in a way so as to increase the opportunity for smaller and more specialized firms to bid;..."*	On going: Two specific examples where contracts were 'de-bundled' to allow smaller firms to compete: i) GN Employee Relocation/Household Moves, Baffin, Kivalliq and Kitikmeot Regions – used to be one contract for all of Nunavut but is now three separate contracts – one in each region; and ii) Kiliinik High School, Cambridge Bay PWS Kitikmeot entered into a Construction Management contract with a General Contractor who then tendered out and managed more than 20 small contracts for the construction of the school – this permitted smaller, more specialized firms to competitively bid Initiated: Community Consultation The GN's Community Consultation process (Chapter 3 GN Contract Procedures Manual) which was on-going to a limited extent, has been revisited and commitment made to include NTI in this process to visit ideas about procurement strategies, etc, for new infrastructure

6	**Training for GN Employees and Businesses** That the procedures in Chapter 3 (Training) of the GN Contract Procedures Manual be adhered to as follows: a) In consultation with NTI, GN will carry out Section 3.1.1 (Article 24 training) and Section 3.4.1 (translation of relevant training documents) from the GN Contract Procedures Manual. b) The GN will make available to NTI its training schedule as set out in Section 3.2.2 and will provide NTI with its workshop materials prior to the workshop as set out in Section 3.2.3 of the GN Contract Procedures Manual. c) NTI and the GN will make all efforts to provide simultaneous interpretation during workshops as set out in 3.2.3ii.	Training for GN/Housing Authorities/Hamlets: • Introductory workshops by Michael Asner Consulting sponsored by HR and delivered in Cambridge Bay, Rankin Inlet, Arviat, Pond Inlet, and Cape Dorset April and May 2002: o *"Bullet-Proofing Your RFPs: A Survival Guide for Public Sector Buyers"* o *"Hot Topics - Constructing an Effective RFP"* o *"RFPs – Management Briefing"* PMAC Courses for GN Employees (coordinated through PWS Contracts & Procurement) • *"Bullet-Proofing Your RFPs: A Survival Guide for Public Sector Buyers"* – Iqaluit Feb'02: • *"Fundamentals of Contract Law"* – Iqaluit, Pond Inlet & Cambridge Bay – November 2002 • *"Drafting Contracts I & II"* – Iqaluit June 2003 • *"Drafting Contracts I* – Cambridge Bay Sept'03
6	**Training for GN Employees and Businesses cont'd**	In-House Training for GN Employees (prepared and delivered by PW&S Contracts & Procurement) • *"GN Contracting Overview"* Feb'02 • *"Contract Reporting"* July '02 Training for Businesses • *Writing RFP's*, by Michael Asner Consulting GN sponsored by SD and delivered in Iqaluit Feb 2002
7	**Study to Measure Inuit Participation** That the GN and NTI jointly conduct a study to determine how to measure components of Inuit Participation, which might include but not be limited to Inuit Labour, Inuit Management, Inuit Ownership and Training.	No action to date; consultation with NTI required.
8	**Study to Examine Economic Leakage** That the GN and NTI commission a study to examine the economic effects of large outside firms performing work in small communities.	No action to date; consultation with NTI required.
9	**Tender Notices** That the GN reviews its system of issuing Tender Notices, and attempts to increase the ways in which it communicates its contracting activities across Nunavut, including the use of radio to advertise Tender Notifications, taking into account the extra time required for bidders in the more remote communities.	- The GN Tender/RFP Notification Listing is updated three times a week on the GN Business Opportunities web page. It's forwarded to CEDOs, NTI, and QIA for posting in communities and notification of tenders for companies interested in bidding and capable of doing the work. Listing is also posted in PWS offices on the Tender/RFP Notice Board at the front entrance. - Individual tender notices are sent to the community and for public tenders, ads are placed in Nunavut and Northern newspapers for up to two weeks (translated). - In January of each year the GN places Advance Notice ads for upcoming large value construction

		tenders and As & When Maintenance Services tenders. - Where tender periods are shortened due to sealift schedules, Nunavut and Inuit firms are forwarded the draft ad in advance of it appearing in papers to alert them of the tender and notify them to pick up documents.
10	**Plan Holders/Bidders Lists** That the GN provide relevant contracting information, including Plan Holders/Bidders Lists and Award Lists to Nunavut communities for public posting	No action
11	**Availability of Tender Documents** That, where practicable, the GN provide tender documents in the community where work is to be done, as well as at the Regional Office	No action
12	**Delivery of Bidders Proposals** That bidders, where practicable, be allowed to deliver bid or proposal documents to GN offices in the community where the work is to be done, as well as to Regional offices	No action
13	**Translation** That the GN undertake to translate bid or proposal template documents into Inuktitut and Inuinnaqtun	No action. Action pending full review and update of all tender/RFP templates. Note: For tenders or RFPs, where a bidder requests a document to be translated, all other bidders are asked if they want the document as well and the document is translated and given to the parties who requested it.
14	**Interpretative Bulletin (see attachment)** That and Interpretive Bulletin should be attached to the NNI Policy to clarify a number of interpretation questions. The Committee recommends that the interpretive bulleting be drafted by PW&S and be recommended for approval by Cabinet to have the same effective date as the NNI Policy. This interpretive bulletin should include the following items: (attached)	PW&S prepared the Interpretive Bulletin in accordance with the recommendation and before sending it to Cabinet for approval, sent it to NTI for review (Sept'02). PW&S has not yet forwarded the bulletin to Cabinet as we expect to receive comments respecting the bulletin from NTI.

Appendix 6

NEW CLAUSES FOR SECTION 18 OF THE NNI POLICY

At the conference call of September 30 ,2003 it was agreed that it would be useful if I were to draft amendments to s. 18 of the NNI Policy incorporating my recommendations. The draft amendments build on the draft Terms of Reference for the Appeals Board previously developed by the parties.[1]

18.1 Subject to 18.2, an independent Contracting Appeals Board shall be established consisting of three Commissioners and three Alternate Commissioners appointed by the Minister for a term of three years as follows:

(a) one Commissioner and one Alternate Commissioner from nominees put forward by NTI

(b) one Commissioner and one Alternate Commissioner from nominees put forward by the Nunavut regional Chambers of Commerce.

(c) one Commissioner and one Alternate Commissioner appointed by the Minister.

18.2 In order to provide for continuity, the Minister shall appoint the first members of the Board to staggered terms as follows:

(1) one Commissioner and one Alternate Commissioner for a term of 2 years;

(2) one Commissioner and one Alternate Commissioner for a term of 3 years; and

(3) one Commissioner and one Alternate Commissioner for a term of 4 years.

18.3 The Minister shall have regard to the importance of regional representation in making appointments to the Board.

18.4 If either NTI or the Chambers of Commerce do not submit nominations to the Minister within 45 days of the Minister=s request for nominations, the Minister may make the necessary appointment.

18.5 (a) A Commissioner or Alternate Commissioner must be a Nunavut Resident as defined in the NNI Policy, that is a person who:

(i) is on the NTI Inuit Enrolment List or who has spent the last twelve months ordinarily resident in Nunavut; and

(ii) has a valid Nunavut healthcare card and/or other accepted proof of residency such as a Nunavut drivers license, a lease or rental receipt, and provides a physical address where residing.

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[1] In the amendments A Contracting Authority@ is capitalized as in s. 18 of the NNI Policy.

(b) A Commissioner may not be an employee of, or contractor for:
  i) The GN Department of Public Works and Services or the Contracting Authority of the disputed contract;
  ii) NTI or a Regional Inuit Association;
  iii) a Chamber of Commerce in Nunavut.

*18.6 On appointment, a Commissioner shall certify in writing that he is not an employee as defined in paragraph 18.5 (b), and that to the best of his knowledge he is not in a conflict of interest and will not sit on any appeal if a conflict of interest comes to his attention.

18.7 No person may serve as a Commissioner until such person has accepted the position in writing and has executed a confidentiality agreement.

18.8 Each year one Commissioner shall be chosen by the Commissioners to serve as Chairperson. The role of the Chairperson is to preside over meetings of the Board and to supervise the operations of the Board.

18.9 If a Commissioner is unable to act in a particular appeal an Alternate Commissioner shall be selected by the Chairperson to hear the appeal.

18.10 The Minister shall appoint a person to act as Secretary of the Board.

18.11 a) A contractor who wishes to challenge an award of a tender or RFP must do so in writing within five (5) business days of the award announcement. The appeal must be directed to the Contracting Authority and copied to the GN NNI Policy Advisor, and must set out the following information.
  (i) the name, address, telephone and if available fax number and email address of the party challenging the award;
  (ii) the tender or RFP number and/or title;
  (iii) the issue(s) to be reviewed by the Contracting Authority; and
  (iv) the remedy sought by the contractor.

b) The Contracting Authority shall have five (5) business days to respond in writing and shall copy the response to the GN NNI Policy Advisor.

18.12 (a) If, after a further 5 business days have elapsed, a contractor is not satisfied with the response of the Contracting Authority, or if no response has been received from the Contracting Authority, the contractor may appeal the award to the Board.

(b) An appeal to the Board must be in writing and directed to the Contracting Authority within 15 business days of the award announcement.

(c) The appeal must set out the following:
  (i) the name, address, telephone and if available fax number and email address of the party challenging the award;
  (ii) the name of the Contracting Authority that issued the tender or RFP
  (iii) the tender or RFP number and/or title

(iv) the issue(s) to be reviewed by the Board including the reasons why the Contractor believes the application of the NNI Policy is incorrect; and

(v) the remedy sought by the contractor.

18.13 (a) An appeal from an award by a contractor to the Contracting Appeals Board may be made on the ground that the Contracting Authority in making the award has erred in the application of the NNI Policy.

(b) For greater certainty, there shall be no appeal to the Board from an act or omission relating to the performance of a contract that has been awarded.

(c) Notwithstanding (a) and (b) above, the Board has jurisdiction to consider and make recommendations on any matter relating to the application of the NNI Policy that is referred to it in writing by GN and NTI jointly.

18.14 Where the appeal filed with the Board does not fall within the jurisdiction of the Board the appeal may be dismissed by order of the Board without holding a hearing.

18.15 The Secretary of the Board shall immediately give notice of an appeal to the Board to the successful bidder, to NTI and to the Contracting Authority.

18.16 In addition to the appellant, the Contracting Authority, the successful bidder and NTI have the right to participate in proceedings before the Board in a particular appeal. The Board may, in its discretion, permit any other person to participate in the proceedings.

18.17 The Board shall hear the appeal as soon as possible and, in any event, shall hold a hearing no later than 10 business days after the appeal has been filed with the Board.

18.18 The Board may receive representations and evidence from the parties in writing, by conference call or in person having regard to convenience and economy. If the Board holds a hearing by conference call or by personal appearance the proceedings shall be recorded by the Board.

18.19 The Board shall conduct its proceedings in an informal manner and is not required to receive evidence on oath.

18.20 Where required in a proceeding, the Board shall provide the services of an interpreter.

18.21 After hearing an appeal, the Board may:

(a) dismiss the appeal; or

(b) allow the appeal and recommend to the Contracting Authority that remedial action, consistent with sound procurement policy and practice, be taken by the Contracting Authority, which may include:

(i) requiring the contractor to undertaken additional measures,

(ii) providing the contractor with specific information as to Inuit or Inuit firms who are available and qualified,

(iii) paying compensation to an unsuccessful bidder,

(iv) putting the proposed contract in abeyance until the dispute is resolved, except in cases of urgency,

(v) changing any procedure or policy followed by contracting authorities,

(vi) in exceptional circumstances involving long term contracts, terminating a contract in whole or in part, and a reassessment or re-issue of tenders.

18.22 Decisions of the Board shall be by consensus and failing consensus by a majority vote. The Board shall make a decision as soon as possible after a hearing.

18.23 The Board shall give written reasons for its decisions signed by the Commissioners. If there is a majority decision, the dissenting Commissioner may give reasons for the dissent.

18.24 The Board shall distribute copies of the decision to all parties who participated in the appeal.

18.25 Notwithstanding that an appeal is pending, the Contracting Authority, in its discretion, may enter into a contract with the successful bidder.

18.26 If the Contracting Authority does not accept the recommendations of the Board for remedial action, in whole or in part, it shall issue reasons for its decision.

18.27 The Board shall be given access by the Contracting Authority to the response to an RFP or tender bid of the appealing contractor and of the successful contractor for the purposes of determining an Appeal.

18.28 The record of proceedings before the Board, including its decision, shall be placed on a public file.

18.29 The proceedings of the Board shall be conducted in accordance with the language policy of the Government of Nunavut.

18.30 An Annual Report, including financial statements, shall be prepared by the Board at the end of each fiscal year. The Annual Report shall include a summary of appeals heard and decisions rendered.

18.31 The Annual Report shall be submitted to the Government of Nunavut and to Nunavut Tunngavik Incorporated and made available to the public.

18.32 The Government of Nunavut shall be responsible for the costs of the Board in accordance with GN Policies.

* The text of Article 18.6 has been changed from the original report submitted to the GN and NTI to correct a minor technical problem with the original language. This change was made by mutual agreement.